

Supreme Court of the United States

OCTOBER TERM, 1969

No. 727

DONALD J. VALE,

Appellant,

—v.—

LOUISIANA

APPEAL FROM THE SUPREME COURT OF THE STATE OF LOUISIANA

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**IN THE CRIMINAL DISTRICT COURT
FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA**

No. 198-784

Information for VIO. R.S. 40:962

STATE OF LOUISIANA

v

**JAMES P. VALE
DONALD J. VALE**

MINUTE ENTRY—September 14, 1967

Walter Drake, Esq., counsel for defendant, Donald Vale, filed with the Court Motion to Withdraw. Motion denied by the Court, to which counsel for defendant reserved a bill of exceptions, all as noted by the Court Reporter. Counsel for defendant, Donald Vale, filed with the Court Motion to Suppress on behalf of the defendant. After hearing held the Court denied Motion to Suppress, to which counsel for both defendants reserved bills of exceptions, all as noted by the Court Reporter. Now into Court comes Harry R. Hull, Jr.; Assistant District Attorney, and John Volz, Assistant District Attorney, who prosecute for the State. The defendant, Donald Vale, was represented by Walter Drake, Esq. The defendant, James Vale, was represented by J. D. McNeil, Esq. Both sides being ready the Court ordered the trial to begin. 11:11 A.M. the State filed with the Court Notice of Intention to Use Confession. Counsel for the State served defense counsel with copies of same. Both counsel for defense moved the Court for continuance. Motions denied by the Court, to which counsel for defendants reserved bills of exceptions, all as noted by the Court Reporter. Lloyd R. Baldini, George E. Danielson, Earl J. McConnell, Sr., Bernard F. Oser, Nathan Philips,

Fred W. Gould, Richard P. Haydel, William F. King, Gerald D. Katz, Calvin J. Kaupp, Mrs. Ruth A. Lumsden, and Alton J. Ricard, were duly empanelled, accepted by both the State and defense, and were ordered by the Court to be sworn as jurors in this case. The bill of information was read to the jury by the Clerk. Counsel for the defendants requested written charge. Motion granted by the Court. Mr. Hull made opening statement to the jury on behalf of the State. Mr. Drake, counsel for defendant, Donald Vale, and Mr. McNeil, counsel for defendant, James Vale, waived opening statement and relied on their pleas of Not Guilty. John Koch was duly sworn by the Clerk and he testified for the State and was not cross-examined by defense. During the testimony of Mr. Koch, the State and defense entered into the following stipulation: That Mr. Koch is a duly qualified chemist and an expert in the field of chemistry and analysis. The Court then ruled that Mr. Koch was a qualified chemist and an expert in the field of chemistry and analysis, and, as such, would be allowed to testify as to his opinion in the above field. During the testimony of Mr. Koch, the State marked for identification a brown manila envelope, marking same S-1 for identification; a spoon, marking same S-2 for identification; a package containing a medicine dropper and two hypodermic needles, marking same S-3 for identification; a package containing three capsules, marking same S-4 for identification; a package containing white tablets, marking same S-5 for identification; a package containing numerous capsules, marking same S-6 for identification; and a plastic jar containing capsules, marking same S-7 for identification. 12:43 P.M. the Court ordered a recess for lunch. The Court instructed the jurors not to discuss the case among or between themselves. 2:00 P. M. the jury returned to their seats in the jury box and the Court, in the presence of the defendants, their counsel, and counsel for the State, ordered the trial to proceed. Officer Clinton Laumann, Officer Ronald Brady, Officer Frederick Soule, Jr., were duly sworn by the Clerk and they testified for the State and were cross-examined by the defense. During the testimony of Officer Clinton

Laumann, the State laid the predicate as to the free and voluntary statement, admission, and/or confession made by the defendant, Donald Vale. The Court ruled that the State had successfully carried the burden of proving that the statement, admission, and/or confession was made freely and voluntarily, to which counsel for defense reserved bill of exceptions, all as noted by the Court Reporter. During the testimony of Officer Ronald Brady the State offered into evidence, without objections by defense, the exhibits previously marked S-1, S-4, S-6 and S-7. The Court ordered the exhibits marked and received into evidence. The State offered into evidence the exhibits previously marked S-2 and S-3 for identification. The Court ordered the exhibits marked and received into evidence, to which counsel for both defendants reserved bills of exceptions, as as noted by the Court Reporter. During the testimony of Officer Frederick Soule, Jr., the State laid the predicate to qualify Officer Soule as an expert in illicit uses of narcotics and addict's trackmarks, etc. Both the State and defense submitted the matter on the predicate. The Court ruled that the witness was an expert in the field as above described and that the witness would be qualified to testify as to his opinion in said matters, to which counsel for defense reserved bill of exceptions, all as noted by the Court Reporter. During the testimony of Officer Frederick Soule, Jr., the Court ordered the State to produce the police report to Mr. McNeil, counsel for defendant, James Vale, for viewing, to which the State reserved a bill of exceptions, all as noted by the Court Reporter. Mr. McNeil offered into evidence the police report, marking same D-1 to which counsel for the State objected. The Court sustained the objection by the State, to which counsel for defendant, James Vale, reserved a bill of exceptions, all as noted by the Court Reporter. Officer Clinton Laumann was recalled by the State and was cross-examined by Mr. McNeil. During the testimony of Officer Laumann, counsel for defendant, James Vale, reserved bill of exceptions, all as noted by the Court Reporter. 4:37 P.M. the State rested its case. Adolph Wolff was duly sworn by the Clerk and he testified for the defense and

was not cross-examined by the State. 4:35 P.M. Mr. McNeil, counsel for defendant, James Vale, rested his case. John Shea was duly sworn by the Clerk and he testified for the defense and was not cross-examined by the State. 4:45 P.M., Mr. Drake, counsel for defendant, Donald Vale, rested his case. Mr. Hull made opening argument to the jury on behalf of the State. During Mr. Hull's argument, Mr. McNeil, counsel for defendant, James Vale, reserved bill of exceptions, all as noted by the Court Reporter. Mr. McNeil made closing argument to the jury on behalf of the defendant, James Vale. Mr. Drake made closing argument to the jury on behalf of the defendant, Donald Vale. Mr. Volz made closing argument to the jury on behalf of the State. The Court filed written charge and ordered the State and defense furnished with copies of same. 5:42 P.M. the Court charged the jury as to the law pertaining to this case. 6:12 P.M. the jury retired to deliberate on its verdict. 7:25 P.M. the jury returned to the Courtroom and in the presence of the defendants, their counsel, and counsel for the State, announced the following verdict: Guilty as Charged as to Donald Vale and Guilty as Charged as to James Vale (Sgd.) Gerald D. Katz, Foreman. On motion by defense the Court ordered the jury polled. The jury was polled and it was found to be nine to three for Guilty as Charged as to Donald Vale and nine to three for Guilty as Charged as to James Vale. The Court ordered the verdict recorded and the defendants remanded to await sentence on September 29, 1967. The Court then thanked the jurors for their services and discharged them from this case.

* * *

No. 200-946

Information for VIO. R.S.15:529.1

STATE OF LOUISIANA

v
DONALD J. VALE

MINUTE ENTRY OF November 9, 1967

The defendant appeared at the bar of the Court to be sentenced, attended by his counsel, Walker Drake, Esq. The Court sentenced the defendant to serve fifteen (15) years at hard labor in the State Penitentiary, Counsel for defense filed with the Court Motion for Appeal. The Court ordered the motion received and filed and granted same, making appeal returnable January 9, 1968. The defendant was said to be 30 years of age, born September 10, 1937, in the State of Louisiana. The Court this day signed Bills of Exceptions one through seven on behalf of the defendant.

• • •
IN THE CRIMINAL DISTRICT COURT
FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA

No. 198-734

BILL OF INFORMATION—Filed April 26, 1967

JOHN P. VOLZ, Assistant District Attorney for the Parish of Orleans, who in the name and by the authority of the said State, prosecutes, in this behalf, in proper person comes into the Criminal District Court for the Parish of Orleans, in the Parish of Orleans, and gives the said Court here to understand and be informed that one DONALD J. VALE and one JAMES P. VALE, late

of the Parish of Orleans, on the twenty-fourth day of April in the year of our Lord, one thousand nine hundred and sixty-seven with force and arms in the Parish of Orleans aforesaid, and within the jurisdiction of the Criminal District Court for the Parish of Orleans, did wilfully and unlawfully possess and have under their control a narcotic drug, to-wit: Heroin, contrary to the form of the Statute of the State of Louisiana in such case made and provided and against the peace and dignity of the same.

(Sgd.) JOHN P. VOLZ
Assistant District Attorney
for the Parish of Orleans

ENDORSEMENTS ON BILL OF INFORMATION

No. 198-734

SECTION "E"

STATE OF LOUISIANA

versus

DONALD J. VALE (W)
1826 Arts Street

JAMES P. VALE (W)
1826 Arts Street

Information for Vio. R.S. 40:962

Filed: April 26th, 1967

(Sgd.) H. ALEXANDER
Deputy Clerk

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IN THE CRIMINAL DISTRICT COURT
FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA

MINUTE ENTRY—9/14/67

Walter Drake, Esq., filed Motion to Withdraw as counsel for Donald Vale. The Court denied motion. Counsel reserved bill of exceptions. Mr. Drake filed Motion to Suppress as to Donald Vale. After hearing held in chambers of judge, the Court denied the Motion. Three bills of exceptions were reserved by Mr. Drake and Mr. McNeil as to their respective clients.

(Sgd.) S. MARCHESE
Minute Clerk

MINUTE ENTRY—September 14, 1967

We the jury find the defendant Donald J. Vale guilty as charged and the defendant James P. Vale guilty as charged.

(Sgd.) GERALD D. KATZ
Foreman

[fol. 38]

IN THE CRIMINAL DISTRICT COURT
FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA

No. 198-734, Section "E"

STATE OF LOUISIANA

versus

JAMES P. VALE

TRANSCRIPT OF HEARING ON MOTION TO SUPPRESS
AND PRELIMINARY HEARING ON BEHALF OF
CO-DEFENDANT

BY THE COURT: Are you gentlemen ready to proceed in this matter?

BY MR. SHEA: We're ready, Your Honor.

BY MR. HULL: The State's ready.

BY THE COURT: You want a separation of the witnesses?

BY MR. SHEA: Yes, sir. I'd like the witnesses separated.

BY THE COURT: Alright, Mr. Champagne, order all of the witnesses in this case to step into the hallway or the District Attorney's office until their names are called. Call your first witness.

BY MR. HULL: The State calls Officer Ronald Brady.

[fol. 39] RONALD BRADY, being called as a witness on behalf of the State, after being first duly sworn by the Clerk, testified as follows:

DIRECT EXAMINATION

BY MR. HULL:

Q. State your name, please.
A. Ronald Brady.

Q. And your occupation.

A. Policeman, New Orleans Police Department, City of New Orleans.

Q. How long have you been working for the police department, Officer?

A. For over four years.

Q. Do you know the defendant in this case, James Vale?

A. Yes, sir, I do.

Q. If he's present in Court, would you point to him?

A. Yes, sir. He's sitting right next to Mr. Shea.

BY MR. HULL: Let the record note the witness pointed to the defendant, James Vale.

BY MR. SHEA: Judge, am I to understand we're taking both matters at once? The preliminary hearing and the Motion to Suppress?

[fol. 40] BY THE COURT: Well, you also have a motion for a severance.

BY MR. SHEA: Yes, sir. We can take that up afterwards. It might possibly become moot. I'm talking about the Motion to Suppress and the Preliminary Hearing.

BY THE COURT: Yes, those two, but not the Motion for Severance.

BY MR. SHEA: Yes, sir.

BY THE COURT: You may proceed.

BY MR. HULL:

Q. Officer, Brady, directing your attention to the 24th of April of this year, did you have occasion to have any dealings with the defendant, James Vale, on this date?

A. Yes, sir, I did.

Q. Would you state the circumstances surrounding your dealings?

A. On the morning of April 24th, I had received a phone call in the office from Mr. Volz in reference to . . .

BY MR. SHEA: I'll object to anything anybody else told him.

BY THE COURT: Under the Motion to Suppress, it's admissible. Overruled. Probable cause.

[fol. 41] BY MR. SHEA: I'll reserve a bill of exceptions to Your Honor's ruling.

BY THE COURT: You may have your bill. Proceed.

BY THE WITNESS: Mr. Volz advised in—Mr. Volz advised us there were two capiases for the arrest of Donald Vale and he also informed us they were in the hands of the Sheriff's Office and after I received the call, I went to the Sheriff's Office and spoke to Deputy Ortigue and he gave me two capiases for the arrest of Donald Vale.

BY MR. HULL:

Q. Is Donald Vale related to the defendant before the bar in any way?

A. Yes, sir.

Q. In what way?

A. He's his brother.

Q. Proceed.

A. After I received these capiases, Officer Laumann and Officer Soule and myself went to the area of 1826 Arts Street and conducted a surveillance at about 11:45 A.M.

Q. What is at that address, 1826 Arts Street?

A. This is a residence where I had information that Donald Vale was staying.

[fol. 42] BY THE COURT: Is that this defendant here?

BY THE WITNESS: No, sir.

BY THE COURT: Proceed.

BY THE WITNESS: While we were in the area at about 11:45, after we arrived—at about 12:00 Noon I observed a 1958 green Chevrolet pull in front of the address 1826 Arts Street and at this time the person driving the car blew his horn and then pulled up a little and backed into a parking place and again blew the horn.

BY MR. HULL:

Q. Go on.

A. At this time I recognized Donald Vale come out the house and walk up to the passenger side of the car

Q. How far was the car from the house?

A. The back of the car was sitting directly in front of 1826 Arts.

BY THE COURT: In the street?

BY THE WITNESS: Yes, sir.

BY THE COURT: How far is the house from the street?

BY THE WITNESS: I'd say roughly thirty to thirty-five feet. And Vale leaned into the passenger side of the car and after about a minute, he stood and looked [fol. 43] around and walked rapidly back into the address of 1826 Arts. About a minute later, he came out on the porch and looked around and walked rapidly to the automobile to the passenger side and leaned in the window again and at this time I got into the police car along with Officer Laumann and Soule and approached the Chevrolet.

BY MR. HULL:

Q. How far were you from the house in question?

A. About a half a block. As we approached, about three car lengths from the Chevrolet, Donald Vale stood up and looked at us and started to turn and walk away. The Chevrolet started to pull off and we blocked the path of the Chevrolet and the car stopped and drove back a foot or so. Officer Laumann and Soule got out the car and told Donald Vale to stop, he was under arrest. I immediately got out of the car and went over to the Chevrolet and just as I got by the car, I observed the driver reach into his mouth with his right hand. I walked over to the car and identified myself and asked the driver to step out. I asked him to identify himself and he stated he had no identification at all. I asked [fol. 44] if he had a driver's license and he said he didn't and I advised him he was under arrest at this time and walked him to the side of the car where Soule and Laumann were standing with Donald Vale. We then advised Donald Vale we were going in the house to conduct a search. We also informed him we had two capias for his arrest and also we told him from the transaction

we had seen we were going to search the house and then we advised him of his rights.

BY THE COURT: Whose rights are you talking about?

BY THE WITNESS: Donald Vale.

BY THE COURT: This is who? This defendant sitting here?

BY THE WITNESS: James Vale.

BY THE COURT: And you're talking about Donald Vale?

BY THE WITNESS: Yes, sir.

BY THE COURT: Proceed.

BY THE WITNESS: And as we got into the house we asked Donald Vale if he had any valuables or money he wanted to pick up and hold while we searched and he stated he did not. Donald Vale was seated in the front room along with the subject we had taken out of [fol. 45] the Chevrolet and approximately a minute or two, no more than three minutes, Officer Laumann had walked into the back bedroom and while I was standing in the front room, James Vale and his mother came into the front room of the house. At this time I identified myself to them and told them Donald Vale was under arrest and we were going to conduct a search of the house. At this time I asked James Vale if he would come to the back bedroom and stay with Officer Laumann while he conducted a search. James Vale walked into the bedroom along with myself and Mrs. Vale, the mother.

BY MR. HULL:

Q. How many bedrooms were there in this house?

A. There's two bedrooms.

Q. How many beds were in the particular bedroom you're talking about?

A. If I recall, there was two bedrooms.

Q. You recall how many beds were in the other bedroom?

A. One.

Q. Could you tell from this other bedroom whether this was a man or a woman's room?

[fol. 46] A. Not offhand, no, sir.

Q. Proceed.

A. As we—Officer Laumann was in the back and he started searching a clothes locker which also has a set of dresser drawers attached to it and James Vale was seated on the bed looking at Officer Laumann and Officer Laumann then was searching a white coat and removed a piece of cellophane from which—there were three capsules in it—with a powder. As I seen this, I walked into the front room and asked Donald Vale to step into the back bedroom. When he came in the back room, Officer Laumann held up the cellophane and asked who it belonged to and at this time Donald Vale stated it was his. Officer Laumann, I believe, at this time informed James Vale that he was also under arrest and we also asked who stayed in this bedroom and Mrs. Vale then stated "Donald does not stay at this address". She said, "He does not stay here at all. Pat Vale stays here and this is his bedroom."

Q. Who is Pat Vale?

A. James Vale. And Officer Laumann then advised James Vale of his rights and proceeded to conduct a search. After he went into another coat which was a [fol. 47] brown coat, I believe, he removed a rubber contraceptive with 170 capsules, approximately, in it and also a small Bufferin bottle, I believe, with 76 capsules. And he also removed a small finger stall with 103 white tablets. Donald Vale stated that all of that belonged to him and at this time I asked him what about his outfit, meaning his narcotic paraphernalia, and he said "You have all the rest of it. I might as well give you that too". He said it was in the bathroom and I went in with him to the bathroom and he pointed to the second shelf in the linen closet and said it was under some towels and we looked under the towels and removed a spoon and a piece of paper containing a narcotics outfit and then we completed our search and we informed both Vales they would be brought to the Central Lockup and charged with possession of narcotics and also Donald Vale additionally to be booked with the two capiases.

Q. What was done with the items you picked up in the house?

A. The ones I had picked up I kept in my possession until we got to the Narcotics Office and I then placed them in the evidence envelope.

[fol. 48] Q. This house at 1826 Arts, do you know of your own knowledge whether the defendant lives there or not?

BY THE COURT: Of your own knowledge, he's asking.

BY THE WITNESS: No, sir.

BY MR. HULL:

Q. Have you had any previous dealings with Donald Vale prior to this particular incident?

A. Yes, sir.

Q. Within a period of about six weeks prior to April 24th

BY MR. SHEA: If Mr. Hull wants to testify, I would appreciate it if he would let the witness testify.

BY THE COURT: Try not to lead the witness. However, I'm hearing this without the intervention of a jury and I separate the good from the bad.

BY MR. HULL:

Q. Have you ever had occasion to arrest Donald Vale prior to April 24th?

A. Yes, sir.

Q. How many times?

A. I'd say approximately four times. The last two times being March 7th and I believe March the 10th.

Q. Would you state the circumstances of your arrest on March 7th?

[fol. 49] BY MR. SHEA: I object, Your Honor.

BY THE COURT: We won't let you go into that. We'll be trying four or five cases here. We're trying to find out what happened on this particular occasion insofar as the search and seizure is concerned and insofar as the Motion to Suppress is concerned, he could have arrested him a hundred times and that wouldn't have anything to do with this case except to create probable cause.

BY MR. HULL: That's my intention.

BY THE COURT: But this man was not searched himself. The house was searched. I'm interested in that particular phase of the situation.

BY MR. HULL: Your honor, the previous actions of Donald Vale . . .

BY THE COURT: This is not Donald Vale we have here. I know what you're trying to do but I would like to hear something pertaining to this particular defendant. You see, Donald Vale is not before me this morning. I'm hearing a motion to suppress insofar as this defendant is concerned. And a preliminary hearing. I'm not interested in Donald. I understand they had arrest warrants for Donald Vale and I understand they arrested Donald Vale outside of the house by an automobile and they blocked an automobile from pulling away. I [fol. 50] heard all of this and Donald was also under arrest outside and I understand from the testimony that after the officer got inside with his other co-officers that this defendant and a lady purported to be this defendant's mother, came into the house, is that correct?

BY THE WITNESS: Correct, sir.

BY THE COURT: Let's take it from here on. Let's forget Donald for the time being. I heard all of the evidence about Donald saying this was his and this is mine and this is the other. That could be a knife that could work two ways. He might be admitting it was his because he might have wanted to get his brother out of it. He might have thought let's one of us go instead of two. I understand, but let's stay confined to what we are actually trying. This man. He's not in trial now but at the same time it pertains to his particular phase of this transaction we're trying now. You see, Donald is not before us. Alright, proceed.

BY MR. HULL:

Q. The evidence that you obtained at this house, you say you brought it back to the narcotics office?

A. We went to the narcotics office and placed it in the evidence envelope and it was turned over to Mr. John Koch, the chemist, for analysis.

[fol. 51] BY MR. HULL:

I have no further questions.

CROSS-EXAMINATION

BY MR. SHEA:

Q. You say you arrived about 11:45 A.M.

A. Yes, sir.

Q. And you say the arrest of Donald Vale took place at approximately 12:05 or 12:10 P.M.

A. I believe it was about 12:05, yes, sir.

Q. At the time you first arrived with your co-officers, was James Vale on the scene?

A. Not at this time. No, sir.

Q. I believe you testified James Vale arrived approximately five or ten minutes later at 12:10 or 12:15, is that correct?

A. To my knowledge, when we arrived as soon as we went in the house it was no more than three minutes. We were still standing in the front room. Officer Lautmann had started to walk into the back room.

Q. When you arrested Vale outside the house, Donald Vale, did you search him?

A. I frisked him. A quick frisk.

[fol. 52] Q. How about this other fellow, Fuzzy? What's his real name?

A. Saucier. I can't pronounce the first name.

Q. This is the fellow you alleged put something in his mouth?

A. Yes, sir.

Q. Did you search him?

A. Yes, sir, I did.

Q. Did you search his automobile?

A. No, sir, I don't think we did.

Q. At the time you entered the house, had you found any narcotics at that time? Before you entered the house?

A. No, sir, not before entering.

Q. And I understand that Officer Laumann was in the back room when James Vale and his mother arrived home, is that correct?

A. Yes, sir.

Q. Isn't it a fact that Officer Laumann and yourself were already searching the house before James Vale and the mother got home?

A. No, sir.

Q. Had you searched any of the rooms?

A. No.

Q. You had not made a cursory inspection?

A. We looked around.

[fol. 53] Q. Had you gone into drawers or closets?

A. No, sir.

Q. Behind the sofa or anything?

A. No, sir.

Q. And I believe you testified that you asked James Vale to accompany you in the back room while Officer Laumann conducted the search. Did James Vale, in fact, go with you into the back bedroom?

A. Yes, sir.

Q. Where was Mrs. Vale at this time?

A. She had also come—I think she walked in the kitchen. I think she had groceries in her hand. I'm not sure.

Q. Before you started searching or Officer Laumann started searching, did either Mrs. Vale or James Vale say anything to you or Officer Laumann?

A. I believe James Vale asked if we had a search warrant.

Q. And what did you tell him?

A. I told him we had two arrest warrants for Donald Vale and I also told him we had probable cause and we were going to search the house.

Q. Do you recall anyone making the statement, "No, we don't have a search warrant, but try to stop us from searching"?

A. No, sir.

[fol. 54] Q. Were you in Officer Laumann's presence the entire time?

A. I can't say I was the entire time. No, sir.

Q. But James Vale did ask you if you had a search warrant, is that correct?

A. Yes, sir.

Q. Did he not object to you all searching that room without a warrant?

A. I didn't take it that he objected. He asked if we had a search warrant and I didn't take it he objected to it.

Q. But you said you didn't have one but you felt you had probable cause because of the alleged transaction you had seen outside the house, is that correct?

A. Yes, sir.

Q. Is that the extent of the conversation as far as the search was concerned?

A. That's all the conversation I had with him.

Q. Did you hear Officer Laumann tell Mrs. Vale anything?

A. No, sir, I can't say I did.

Q. You didn't hear him tell her that he would arrest her also for the possession of narcotics found in the coat?

A. No, sir.

[fol. 55] Q. You were walking in between bedrooms, is that correct?

A. I'd say a majority of the time as the evidence was being found, I was in the back bedroom with them.

Q. Who was watching Donald and Fuzzy?

A. Officer Soule.

Q. Was anyone searching the other bedroom?

A. There was only three of us there. No, sir.

Q. Officer Laumann was the only one searching?

A. I was standing in the back bedroom while James Vale was seated on the bed and Officer Laumann conducted the search. I was just standing there watching.

Q. At this time that the narcotics was found was Officer Laumann the only one searching?

A. Yes, sir.

Q. Prior to finding the narcotics had you advised James Vale that he was under arrest?

A. Not before finding them, no, sir.

Q. You didn't advise him he was under arrest until after you found the narcotics?

A. Yes, sir.

STATEMENT BY MR. SHEA: No further questions.

[fol. 56] **BY THE COURT:**

Q. Let me ask you a few questions. After you had entered the house, I understood you to say that this defendant and his mother came into the house. They were no where around before you all entered that house?

A. No, sir.

Q. Do you know who owns or rents the house you went into on Arts Street? Whose house is it? Or do you know?

A. I know who stays there. I know the mother stays there and from my knowledge that's all I can say.

Q. You don't know whether either James or his brother, Donald, stay there or not, lives there?

A. Only what I've been told by them.

Q. Now, when you placed Donald Vale under arrest and I presume somebody else was under arrest, who was in an automobile outside . . .

A. Yes, sir.

Q. How did you come to go into the house?

A. As soon as we placed them under arrest the front door was still opened and after we informed Donald Vale he was under arrest we also informed him we were going to search the residence for narcotics. At this time he was the only one that had come from inside the house and the only one with access to it at this time.

[fol. 57] Q. What about this man? That's what I want to know. He wasn't there at that particular time?

A. That's correct, sir. About three minutes after we got in the house he entered the house.

Q. You actually don't know whether he lived there or not, of your own knowledge?

A. No, sir.

STATEMENT BY THE COURT: Alright, are you through with this witness?

STATEMENT BY MR. HULL: Yes, sir.

STATEMENT BY MR. SHEA: I have no further questions.

CLINTON LAUMANN, called as a witness on behalf of the State, after being first duly sworn by the Clerk, testified as follows:

DIRECT EXAMINATION

BY MR. HULL:

Q. State your name, please.

A. Clinton E. Laumann.

Q. State your occupation.

A. Patrolman, New Orleans Police Department.

[fol. 58] Q. How long have you worked for the Police Department?

A. A little over eight years.

Q. What section of the police department do you work in?

A. Narcotics Division.

Q. Do you know the defendant in this case James Vale?

A. Yes, sir. The gentleman seated before the bar.

Q. Officer Laumann, directing your attention to the 24th of April of this year, did you have occasion to be at 1826 Arts Street?

A. Yes, I did.

Q. Did anything unusual happen while you were present?

A. Yes, sir.

Q. What time was this?

A. Twelve . . . We first went there about 11:45 A.M.

Q. Who is we?

A. Officer Fred Soule and Ronald Brady and myself. We parked our vehicle in the 1700 block of Arts and took up a surveillance on the residence of James Vale located at 1826 Arts Street. This was about 11:45 A.M. At about 12:00 P.M., this date, a green '58 Chevrolet drove

up in front of the house, blew the horn and then backed [fol. 59] into a parking spot just in front of the house. Shortly after, Donald Vale, the brother of the defendant, came out of the house and went to the side of the car and leaned in the window and looked as if they had a conversation. After a minute or two, Donald Vale turned around and walked back into the house and in about another minute he came back out and went to the side of the vehicle and again leaned in the window. At this time we were parked in the cemetery in the end of the 1700 block of Arts. We pulled out and proceeded down to where Donald was by the vehicle. As we approached, about two or three car lengths from the vehicle Donald Vale looked up at us and turned and walked toward the house. The white male in the automobile, the driver of the green Chevrolet, who was later identified as Arizzio Saucier, began to pull out, but because we were blocking the street, he let the car drift back in the parking spot and placed something with his right hand in his mouth.

Q. What was the manner in which he did this? Was it slow, fast or what?

A. No. It was a normal action, I thought. Not fast or not slow. Officer Brady approached Saucier who was [fol. 60] seated in the car, while I called to Donald Vale and he stopped just at the front steps on the sidewalk in front of the steps of 1826. We walked over to him and told him he was under arrest and also advised him of his rights. I did this along with Officer Soule. Both of us advised him. Saucier was removed from the car and both subjects were brought into the house. We further told them we had capias for his arrest. That his bonds had been upped and we were going to search the house. Soule asked him if he had any narcotics in the house he would surrender and he said, "No, I do not".

BY THE COURT: This is all Donald Vale, huh?

BY THE WITNESS: Yes, sir.

BY THE COURT: Proceed.

BY MR. HULL:

Q. Go on.

A. I proceeded into the third room of the house which seemed to be a man's room. I was just about getting

ready to start searching when James Vale and his mother came into the house. Again, they were informed of why we were there. We explained the capiases and other [fol. 61] activity we had seen, that we were going to search and I began to search in this third room of the house. A bedroom. While searching a chest for drawers with a long compartment on the side used for hanging clothes, I removed a piece of cellophane and three clear capsules with a white powder. In the presence of James and his mother. Donald Vale was brought from the living room where he was to the bedroom and all three Vales were shown the capsules. Donald at this time stated they were his. I asked Mrs. Vale whose room . . . who lived in this room and she stated it belonged to Pat, that Donald Vale did not live at this house. At this time we told Pat Vale he was under arrest and advised him of his rights in the presence of Mrs. Vale and Donald Vale. We went back to the closet again and I stuck my hand into the breast pocket of a brown suit hanging in the closet and I felt a prophylactic containing capsules. I removed the suit from the compartment and asked whose it was and Donald Vale said it was his. He claimed the suit. I went back into the pocket and removed the rubber prophylactic containing 170 capsules, along with a Buf- [fol. 62] ferin bottle with 67 capsules and a yellow rubber finger stall with 103 white tablets. All of these were claimed by Donald Vale. He said they were his. Officer Brady asked Donald Vale if he had an outfit in the house and he said yes, he did. He said "You got everything else, I might as well give you this". He brought Officer Brady into the bathroom of the house and surrendered a brown piece of paper containing a glass eye dropper and a hypodermic needle and a black rubber bulb and a spoon with a burnt bottom. Both the Vales, along with Saucier, were then removed from the premises and brought to the narcotics office where the proper forms were filled out.

Q. What was done with the items you obtained at the house?

A. They were turned over to Officer Brady on the scene as I found them and marked in evidence by Brady.

Q. Do you, of your own knowledge, know whether the defendant, James Vale, lives at this particular house?

A. His mother said he did.

BY MR. SHEA: That's not a proper response.

BY THE COURT: He asked if you knew of your own knowledge. Not what anybody told you.

BY THE WITNESS: No, sir.

[fol. 63] BY MR. HULL:

Q. Have you ever seen him at the house before?

A. No, sir. I seen an automobile he said was his parked in front of the house on numerous occasions. I've never seen him leave or enter the house though.

Q. You say he said, the defendant said it was his?

A. Yes, sir.

Q. How many occasions have you seen this automobile parked there?

A. I think a half a dozen times.

Q. How many bedrooms were there in this house?

A. To the best of my knowledge, two.

Q. How many beds were in the bedroom you searched?

A. Two. A small double bed and just forward of this another cot type. A very small single bed, like a cot.

Q. The other bedroom, did this appear to you to be a woman's or men's bedroom?

A. It had a big double bed and nice spread and all. I thought it was a woman's. I didn't bother with it. I went to the back to the man's bedroom where I thought was the best place to search.

Q. At the time Donald Vale was arrested, how far was he from the house?

A. In front of the house. In front of the door on the sidewalk at the bottom of the steps. He was walking [fol. 64] towards the steps. He looked like he was going to go back in the house when we stopped him.

Q. Have you ever seen Donald Vale at this house before?

A. Yes, sir.

Q. How often?

A. On several occasions.

STATEMENT BY MR. HULL: I have no further questions.

CROSS-EXAMINATION

BY MR. SHEA:

Q. Did you or anyone in your presence have occasion to search Donald Vale and Saucier outside the residence at 1826 Arts?

A. They were frisked for weapons, yes, sir. I frisked Donald Vale.

Q. How about the automobile? Was that searched?

A. No, sir, not by me.

Q. Do you know if anybody did so, of your own knowledge? This is prior to entering the house.

A. No, sir.

[fol. 65] Q. I believe you stated you did place Donald Vale under arrest prior to entering the house.

A. Yes, sir.

Q. What was this for?

A. The capias. The arrest warrants we had.

Q. This is why you told him he was under arrest?

A. That's part of it. As I testified, along with the activity we also seen.

Q. You at that time told him you were going to search the house as a result of the arrest warrant and the transaction you allegedly saw.

A. Yes, sir.

Q. You didn't ask then. You told him you were going to search?

A. Yes, sir.

Q. You felt you had a right to search under those circumstances?

A. Yes, sir.

Q. So there was no consent given by him?

A. I told him I would search the house.

Q. And I believe you said you then entered the house.

A. Yes, sir.

[fol. 66] Q. Where did you go first, after entering the house?

A. The first room is a living room. We went in and Saucier and Donald Vale were seated on the couch and I walked all the way to the back porch and into the back yard looking for Judy Kahill. I went through the house and when I came back to the living room . . . I went to the back of the house and then back in the living room and then to the third bedroom.

Q. You didn't make a search of the living room or the kitchen or front bedroom before searching the back bedroom?

A. No, sir.

Q. So, in order to search, you went directly to the back bedroom?

A. Right.

Q. Had you made a cursory search of any of the other rooms? Sofas or closets or anything? Before going to the porch or, rather, the back bedroom? Did you browse around or look in the closets or anything?

A. Not in closets, no. I looked on top of dressers.

Q. Did you look in any chest of drawers?

A. No, sir.

[fol. 67] Q. Did you go in the bathroom?

A. Yes, I did.

Q. Did you look in the cabinets or anything?

A. No, not at this point.

Q. Did you look under the toilet or around the bowl?

A. Yes, sir.

Q. That was done before you ever got to the back bedroom?

A. Yes, sir. I was looking for Judy. I was looking every place . . .

Q. After you saw Judy wasn't there . . . You weren't looking for Judy around the toilet bowl, were you?

A. No, sir.

Q. You were looking for contraband, were you not?

A. Yes, sir. Let me explain myself. I walked in the bathroom to look behind the door and I looked at the toilet because I was trying to figure if someone was in the house and had beat us, and maybe flushed. I was looking for water. Just to get an idea, to get my feet on the ground.

Q. You did look there and around the toilet while you were there?

A. I looked at the toilet, Mr. Shea.

[fol. 68] Q. Before you told us you searched around the toilet bowl and now suddenly all you did was just look at it.

A. You're playing on words. If search is looking or looking is searching, this is what I did. I was searching for Judy and I looked at the toilet.

Q. At this time James Vale and his mother had not arrived home yet, is that correct?

A. No, sir, not at this point.

Q. Approximately what time did they arrive?

A. Within about two minutes or three minutes after we went into the house.

Q. This would have been what?

A. He was arrested at 12:05.

Q. This would be about 12:10, the time you actually got into the house?

A. The evidence was found at 12:10. I looked at my watch, so it was between 12:05 and 12:10.

Q. When you found the evidence was Mrs. Vale and James Vale both in the back bedroom?

A. Yes, sir.

Q. Didn't James Vale ask if you had a search warrant?

A. Yes, he did.

[fol. 69] Q. What did you tell him?

A. I told him I didn't have a search warrant, but I had arrest warrants for Donald.

Q. Did you say anything else to him?

A. Yes, I told them we had seen the activity and based on the arrest warrant we had for Donald and the activity in front of the house, we would search the house.

Q. Didn't you say, "We don't have a search warrant, but try to stop us from searching"?

A. No, sir.

Q. You didn't say this?

A. No. He asked if we had a warrant and I said no, and I told him we had arrest warrants or capias for Donald and based on what we had also seen besides the warrants, we were going to search the house.

Q. Suppose he would have objected, would you have searched anyway?

A. Yes, sir.

Q. You felt you had a right to search?

A. Yes, sir.

Q. And James Vale was not placed under arrest until after you found the first narcotics; is that correct?

A. Yes, sir.

[fol. 70] Q. Did Mrs. Vale say anything to you about not searching the house?

A. Yes, sir.

Q. What did she say?

A. She told us we didn't have the right to search. She was also present with Pat when this was explained.

Q. This was before the evidence was found?

A. Yes, sir.

Q. And you say you all arrived about 11:45 A.M.

A. Yes, sir.

Q. Was either James Vale or his mother anywhere around the house when you all arrived in the next block?

A. No, sir. We didn't see them leave.

Q. And they weren't there when you first arrived in the house?

A. No, sir.

STATEMENT BY MR. SHEA: No further questions.

STATEMENT BY MR. HULL: I have nothing further.

[fol. 71] **FREDERICK SOULE, JR.**, called as a witness on behalf of the State, after being first duly sworn by the Clerk, testified as follows:

DIRECT EXAMINATION

BY MR. HULL:

Q. State your name for the record, please.

A. Frederick A. Soule, Jr.

Q. Would you state your occupation?

A. I'm employed by the New Orleans Police Department, Narcotics Division.

Q. How long have you been so employed?

A. Approximately seven years.

Q. And the narcotics division?

A. Almost all that time with the exception of three or four months when I attended the Police Academy.

Q. Do you know the defendant before the bar, James Vale?

A. Yes, I know James Pat Vale.

Q. Officer, directing your attention to the 24th of April, of this year, did you have occasion to be at 1826 Arts Street in the City of New Orleans?

A. Yes, sir, I did.

Q. Who was with you at this time?

[fol. 72] A. Officers Laumann and Brady and at the address along with the defendant seated here, Donald Vale, and their mother, Mrs. Vale.

Q. What time did you arrive at this location?

A. Approximately 12:05, give or take a few minutes.

Q. Would you state the circumstances surrounding your arrival?

A. Officer Brady was in possession of two capias for the arrest of Donald Vale and we went to this location to serve them, to apprehend Donald Vale. We apprehended him right in front of the house there.

Q. Would you state the circumstances of the . . .

BY MR. SHEA: Judge, I'm willing to stipulate that his testimony would be the same as the other two officers who preceded him. Unless he has something else he wants to bring out, I'm willing to stipulate his testimony is the same as Officers Brady and Laumann.

BY THE COURT: I'm interested in the testimony that can be adduced pertaining to what they saw under the surveillance. If you want to admit he will testify . . . Were you there when there was a surveillance made of this house?

BY MR. SHEA: That's alright. I'll withdraw it then. Let him go ahead and testify.

[fol. 73] BY THE WITNESS: Officer Laumann and I were in the 1700 block, along with Officer Brady. Officer Brady was on the opposite side of the street from Officer Laumann and I. We had capiases and was watching the address. Around about 12:00 or a few minutes thereabouts, the '58 green Chevrolet drove up and tooted the horn as it drove in front of the house.

BY MR. HULL:

Q. How long had you been outside the house at this time?

A. About ten or fifteen minutes. We got there about 11:45, thereabouts. The Chevrolet tooted the horn and drove up and backed into a parking spot, not quite in front of the house, but right there and again tooted the horn and at this time Donald Vale came out of the . . . came off the porch of 1826 Arts and came to the car. He leaned over to the passenger side of the car and we could see him speaking to the person in the car who we learned to be Andrew Saucier. After a few minutes of what appeared to be conversation between the two, Donald Vale went back in the house and after a few seconds [fol. 74] he returned back to the car. As he came down the steps out the house he was doing what we call "spooking", looking around and at this time we got in car 443 and proceeded to the 1958 green Chevrolet. As we approached, Donald Vale saw us coming or looked in our direction and stood up straight and began to move away from the automobile. Saucier, driving the automobile, attempted to move it forward. However, with us coming forward we got directly in his path, bumper to bumper, and at this time we could see Saucier put his right hand to his mouth. Officer Brady got out and went to Saucier and Officer Laumann and I went to the direction of Donald Vale and told him to halt, he was under arrest at the time.

BY THE COURT: Did you know Saucier before this?

BY THE WITNESS: I had met him and talked to him on the street before, Your Honor.

BY THE COURT: Had you ever arrested him before?

BY THE WITNESS: No, sir. Not prior to this. No, sir.

BY MR. HULL:

Q. Did you know Donald Vale before this time?

A. Yes, sir. I knew him quite well.

[fol. 75] Q. Had you arrested him before?

A. Yes, on other occasions. Twice for narcotics.

Q. How recent had this been?

A. In March. On two occasions in March.

BY MR. SHEA: If he's trying to bring out what I objected to before, I'll object again at this time.

BY THE COURT: He's already answered.

BY MR. SHEA: Well, before he went any further.

BY MR. HULL:

Q. Continue with your story, please.

A. From there we brought Saucier and Vale into the house and at this time I stayed in the front room with Vale and Saucier. Before this . . . while we had them in the house, the defendant, James Vale, and his mother came into the house. We advised them we were police officers and we had capias for Vale and we were going to search the house and Officers Laumann and Brady and this defendant there, James Vale, and the mother went into the rear of the house. I remained in the front room with Donald Vale and Saucier. I re- [fol. 76] mained with those two until after the evidence was found in the rear and brought in the front. We then conveyed the prisoners to the Central Lockup.

Q. Do you know, of your own knowledge, whether the defendant, James Vale, lives at this house?

A. Of my own knowledge I knew he had lived at this house with his mother. I knew this through conversation and all, but as far as seeing him or actually arresting him from this house or anything, I had never done that. I knew he lived there, like I said, through conversation with other people—the mother. Actually, when he came in he told us he lived there.

Q. Had you ever seen him at this address previously?

A. No, sir, I had never.

Q. Had you ever seen any automobile he might have . . .

BY MR. SHEA: It's leading. I object, Your Honor.

BY THE COURT: Sustained.

BY MR. HULL:

Q. You know if the defendant owns an automobile?

A. Yes, sir, I do. He owns an Oldsmobile. Blue in color.

Q. Have you ever had occasion to see this automobile at this address?

[fol. 77] A. Yes, sir. On several nights of checking on several occasions, we had always seen this automobile parked in front of the house or in that neighborhood in that block.

Q. Do you know of your own knowledge whether Donald Vale lives at this address?

A. No, sir, not at this address. On the two other occasions of the arrests he had lived at different addresses. However, we had information he was between two houses. This was one of the houses he was between, but not actually living there. We really couldn't say he was living at one house. He was back and forth between two houses.

BY THE COURT: Who's that you're talking about?

BY THE WITNESS: Donald Vale.

STATEMENT BY MR. HULL: I have no further questions of the witness.

CROSS-EXAMINATION

BY MR. SHEA:

Q. Officer Soule, how far was the car from the street, I mean the car from the house at 1826 Arts Street?

A. The green Chevrolet?

Q. Yes.

[fol. 78] A. As best I can remember, this 1826 is a double house and the car would be parked more in front of the other side of the house.

Q. In distance of feet, how many feet would you say it was parked from the front door of the house?

A. Maybe fifteen or twenty feet, at the most.

Q. When you saw Donald Vale talking to Saucier, you don't know what conversation they had, do you? You couldn't hear it, could you?

A. No, sir, I couldn't hear the conversation.

Q. When you saw Vale go back in the house and come out again, you don't know why he went in the house, do you? Of your own knowledge.

A. Of my own knowledge, no, sir.

Q. Were you in the back bedroom at any time when Officers Laumann and Brady were back there with Mrs. Vale and James Vale?

A. No, sir. I remained in the front room.

Q. You couldn't have heard any conversation they had?

A. No, sir.

STATEMENT BY MR. SHEA: No further questions.

[fol. 79] STATEMENT BY MR. HULL: No further witnesses. I believe we agreed to stipulate that the items recovered were, in fact, narcotics, for the purpose of this hearing.

STATEMENT BY MR. SHEA: I believe we stipulated that the evidence John Koch recovered . . .

STATEMENT BY THE COURT: The way I understand it was that if Mr. Koch were to testify, he would testify that he examined some of the . . .

STATEMENT BY MR. SHEA: Evidence and that the evidence he examined was narcotics.

STATEMENT BY THE COURT: Yes.

STATEMENT BY MR. SHEA: That's the extent of the stipulation.

BY THE COURT: That this is what the police or narcotics squad turned over to him. Is that your agreement?

BY MR. SHEA: I hadn't agreed to go that far. I think we talked about the possibility . . .

BY THE COURT: He would have to testify where he got it from.

[fol. 80] BY MR. SHEA: Yes, sir.

BY THE COURT: Is there any doubt he would testify he got it from the Narcotics Squad?

BY MR. SHEA: Yes, sir, if he got the evidence from Brady and that the evidence he examined was narcotics

BY THE COURT: Now, what is it you don't agree to? That this is it, that he got it from Brady?

BY MR. SHEA: I don't think it . . .

BY THE COURT: What I understood you to say the other day was you would agree you didn't need Mr. Koch here. That if he would testify, he would testify that the specimens of these exhibits were examined by him and they contained narcotics. Is that right?

BY MR. SHEA: Yes, sir.

BY THE COURT: Of course, Mr. Koch would have to testify where he got it from.

BY MR. SHEA: And he would have to say he got it from Officer Brady.

[fol. 81] BY THE COURT: You all want to admit that? Was that all?

BY MR. SHEA: Yes, sir. I'll stipulate that Brady and Laumann found evidence which they turned over to Koch and which was examined by Koch and found to be narcotics.

BY THE COURT: Let the stipulation be entered and recorded. Is that everything, gentlemen?

BY MR. HULL: I have no further witnesses, Your Honor.

BY MR. SHEA: At this time I'll move, one, that the evidence be suppressed and . . .

BY THE COURT: We're not trying the case so you don't have the right to move for a directed verdict. If you want to put any witnesses on the stand, I'll listen.

BY MR. HULL: For the purpose of this hearing, I offer into evidence the items discussed in the hearing.

BY MR. SHEA: We have no objection.

[fol. 82] BY THE COURT: I understand the physical evidence is actually in the Coroner's Office. We could send for it if counsel insists. Is that necessary?

BY MR. SHEA: No, sir. I told Mr. Hull my stipulation also included the evidence as far as this hearing is concerned.

BY THE COURT: The Court will admit it for the purpose of the preliminary hearing only. I'm not saying it's admissible for the trial, but for the preliminary hearing and Motion to Suppress, it's admissible and it is admitted in evidence for that purpose. Is there anything further?

BY MR. HULL: I have nothing further, Your Honor.

BY THE COURT: You wish to offer anything, Mr. Shea?

BY MR. SHEA: We'll rest at this time, Your Honor.

BY THE COURT: The case as I heard it, the police would certainly have probable cause from their surveillance. They didn't have a search warrant to search the house, but from their surveillance and what they saw, [fol. 83] they did certainly have probable cause. The person, Donald Vale, coming out and having a conversation with a man in an automobile and going back in the house and coming out again would certainly be circumstances that would cause the officers under the circumstances since they had warrants to arrest Donald Vale for violation of narcotics, it would certainly give them probable cause to make a search of the house he had entered and had come from. I'm very cognizant of the fact that counsel for the defendant's motion to suppress the evidence and I feel that his reason for it, the Otis James case which originated from this Court, not when I was the Judge in this Court, but my predecessor was sitting at the time of the James case in which the Louisiana Supreme Court said the search was good and the United States Supreme Court reversed it and sent it back here and when it came back here it was my duty to sign the executory order dismissing the whole matter on the decision of the United States Supreme Court. However, I think this is . . . I think this case is distinguishable from the Otis James case because in the

[fol. 84] Otis James case the police did not have probable cause. They had probable cause to make an arrest of Otis James, but they did not have any probable cause to take him back two blocks to his house and search his house. They did not see him come from his house and when he did come from his house he had gone at least two blocks away from his house and there they met a man in an automobile and they arrested him and the man in the automobile and found nothing and then they went back, but this case is distinguishable because the police had warrants to arrest Donald Vale for a prior narcotic violation and in watching the house and seeing him come out and go back in and come back out and talk to the person in the automobile, the Court feels that the police did have probable cause for the search. The next question that would address itself to the Court was who has the right to complain about the search. I have nothing as to whether or not this house was even occupied by the defendant or occupied by his brother. The Court heard some testimony in regard to the mother living in the house. If it was her house then the defendant has no complaint. He didn't own the house. He doesn't do anything unless it's established he lives there he would have no complaint about the house being [fol. 85] searched. By the same token, if the brother didn't live there, he would have no complaint. If you're arrested and charged with something found in my house and I don't object, to my house being searched, I'm the only one that can raise an objection to the search of my house without a search warrant and I heard no evidence that the defendant or his brother actually lived and resided there.

BY MR. SHEA: There was evidence that the defendant admitted he lived there.

BY THE COURT: I heard that, but it didn't establish it, but, be that as it may, I feel the police did have probable cause, under the circumstances, to make their search and I'm going to overrule the Motion to Suppress. We then present the other evidence that was presented as far as this defendant was concerned and this defendant alone as to the preliminary hearing. Whether

the State established sufficient evidence for me to hold him for trial and in view of the facts or evidence, the fact that the defendant did come and go from this residence, his brother, Donald, according to the police, ad-[fol. 86] mitted to them that this was his narcotics—that this was all his—that this narcotics outfit was his, but, be that as it may, the Court is very cognizant of the fact that the State did establish that this was found in this residence and the defendant did show up at the residence and I feel that the State did make out a *prima facie* case sufficiently for me to hold the defendant for trial. I also have the right on the preliminary hearing to consider the question of further reduction of bond and in this case I reduced this man's bond from \$50,000.00 to \$25,000.00 and in view of the evidence I heard this morning I would prevail on counsel to present another motion for a reduction of bond in the case and then I'll go into the matter again and possibly reduce his bond some more in view of the testimony I've heard this morning. I'm going to hold him for trial on the preliminary hearing and I'll overrule the defendant's motion to suppress the evidence in the case.

BY MR. SHEA: I want to reserve bills of exceptions to Your Honor's rulings in both the preliminary hearing and the motion to suppress, making part of both bills, [fol. 87] my motions filed, the testimony adduced today, and the State's Answers, if any were filed, and Your Honor's rulings, part of the bill.

BY THE COURT: You may have your bill.

IN THE CRIMINAL DISTRICT COURT
FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA.

Number: 198-734 Section "E"

STATE OF LOUISIANA

versus

DONALD VALE

MOTION TO SUPPRESS EVIDENCE

NOW come defendant, DONALD VALE, for the purpose of filing a motion for suppression of evidence, reserving all of his rights for relief sought thereon in other motions heretofore or hereafter filed, and without prejudice of any of his rights avers:

I

That on or about April 24, 1967 police officers for the City of New Orleans, whose identity are unknown to the defendant, conducted a search of the premises located at 1826 Arts St., New Orleans, Louisiana, and as the fruits of said search discovered certain narcotic drugs which are the objects in the charge in the Bill of Information filed in this matter.

II

That the defendant herein does not reside at the above described premises.

III

That the search conducted by officers of the New Orleans Police Department was without benefit of a valid search warrant, illegal, unwarranted, unauthorized, unreasonable and without consent, and that said search violated defendant's constitutional rights secured him under the Louisiana Constitution of 1921, Article 1, Sections 9, 10, 11 and of the 4th and 14th amendments of the Constitution of the United States of America.

WHEREFORE, defendant prays that the Motion for suppression of evidence be sustained, that the narcotic drugs mentioned in the bill of information, and any testimony relating to their discovery or any testimony relating to evidence acquired because of their discovery, being the fruits of said illegal search, be suppressed and excluded from introduction from the trial on the merits of this matter.

/s/ Walker H. Drake, Jr.
WALKER H. DRAKE, JR.
Attorney for Defendant
713 Masonic Temple Bldg.
New Orleans, Louisiana

STATE OF LOUISIANA
PARISH OF ORLEANS

BEFORE ME, the undersigned authority personally came and appeared WALKER H. DRAKE, JR. who after being duly sworn did depose and say: that he is the attorney for mover in the foregoing motion and that the allegations contained therein are true and correct to the best of his knowledge, information and belief, and that the motion is filed in good faith and not for the purpose of delay.

/s/ Walker H. Drake, Jr.
WALKER H. DRAKE, JR.

Sworn to and Subscribed Before Me, This 14th Day of September, 1967.

/s/ [Illegible]
Notary Public

ORDER

IT IS HEREBY ORDERED, that a hearing on the above motion be biced for the 14th day of September, 1967.

Sept. 14th, 1967
New Orleans, Louisiana

/s/ Rudolph F. Becker, Jr.
Judge

IN THE CRIMINAL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA

Number 197-734; 200-946 Section "E"

STATE OF LOUISIANA

versus

DONALD VALE

MOTION FOR APPEAL

And now into Court comes the defendant, Donald Vale, through his under-signed, counsel, and on suggesting to this Honorable Court that the record herein shows error to his prejudice and that he is desirous to appeal to The Honorable The Supreme Court of the State of Louisiana.

WHEREFORE, he prays that he be granted a suspensive appeal to The Honorable The Supreme Court of the State of Louisiana, returnable in accordance with law.

/s/ Walker H. Drake, Jr.
WALKER H. DRAKE, JR.
Attorney for Defendant
3309 St. Charles Avenue
New Orleans, Louisiana 70115

ORDER

Let a suspensiye appeal be granted in this case on behalf of the defendant, Donald Vale, to The Supreme Court of the State of Louisiana, and let the return date be the 9th day of January, 1968.

/s/ Rudolph F. Becker, Jr.
Judge

New Orleans, Louisiana
Nov. 9th, 1967

IN THE CRIMINAL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA

Number 198-734 Section "E"

STATE OF LOUISIANA

versus

DONALD VALE

BILL OF EXCEPTIONS, NUMBER ONE—

Filed November 9, 1967

BE IT REMEMBERED that on the trial of the motion to suppress evidence in the above numbered and entitled cause the defendant, Donald Vale, through his counsel, Walker H. Drake, Jr., objected to the overruling of the motion to suppress evidence and to which ruling of the Court, a Bill of Exceptions was taken by Donald Vale through his counsel, Walker H. Drake, Jr.,

The defendant, Donald Vale, objected to the introduction of certain narcotic drugs into evidence because they were the fruits of an illegal search and seizure; the search conducted by officers of the City of New Orleans Police Department was without the benefit of a valid search warrant, and were not incidental to a valid arrest, said search being illegal, unwarranted, unauthorized, unreasonable and without consent.

The defendant, Donald Vale, in his motion to suppress admitted that he did not own or reside at the premises searched. The State of Louisiana, through the Assistant District Attorney for the Parish of Orleans, stipulated on trial of the motion to suppress the fact that the defendant did not live at the premises searched.

The Court over-ruled the defendant's motion to suppress on the sole ground that since the defendant did not reside at the premises searched that he did not have standing to object to the search and seizure of premises which he did not control, and an objection was made by the defendant through counsel to the Court's ruling and a Bill of Exceptions was reserved.

The action of the Court over-ruling the defendant's motion to suppress deprived the defendant of his constitutional rights secured him under the Louisiana Constitution of 1921, Article I, Sections 9, 10, 11 and of the 4th and 14th Amendments of the Constitution of the United States.

The ruling of the Court constitutes prejudicial error in denying the defendant the right to suppress evidence, on the grounds that the defendant does not have standing to object to a search and seizure of premises which he does not own or occupy, under the doctrine of *Jones v. United States* 362 U.S. 257, 4 L ed 2nd 697, 80 S. Ct. 725.

Counsel for the defendant makes the motion to suppress, the stipulation of the State as to the residence of the defendant, and the ruling of the Court, part of this, his formal Bill of Exceptions, Number I.

And the defendant, Donald Vale, through his counsel, Walker H. Drake, Jr., having submitted this, his Bill of Exceptions, to the District Attorney, now tenders the same to the Court and prays that the same be signed and sealed by the Judge of this Honorable Court, same being done this 27th day of October 1967.

Respectfully submitted

/s/ Walker H. Drake, Jr.
WALKER H. DRAKE, JR.
Attorney for defendant,
Donald Vale
713 Masonic Temple Building
New Orleans, Louisiana 70130
Telephone: 524-3295

/s/ Rudolph F. Becker, Jr.
Judge

New Orleans, Louisiana
November 9th, 1967

IN THE CRIMINAL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA

No. 198-734, Section "E"

STATE OF LOUISIANA

versus

DONALD VALE

PER CURIAM TO BILL OF EXCEPTION No. I—
Filed November 15, 1967

TO THE HONORABLE CHIEF JUSTICE AND THE
ASSOCIATE JUSTICES OF THE SUPREME COURT
OF THE STATE OF LOUISIANA:

MAY IT PLEASE THE COURT:

This bill of exceptions, filed by the defendant, Donald Vale, is somewhat confusing inasmuch as a part of said bill of exceptions was reserved to the overruling of a Motion to Suppress and, secondly, when certain evidence was introduced, an objection was made by the defense as to the introduction of this evidence which evidence was the result of a search conducted by members of the New Orleans Police Department.

The Motion to Suppress the Evidence filed on behalf of this defendant reiterates all of the allegations made by the defendant, James P. Vale, and, in addition thereto, alleges that the defendant, Donald Vale, did not live in the residence located at 1826 Arts Street.

The Motion to Suppress on behalf of Donald Vale was filed the morning of the trial and was heard outside the presence of the jury panel and between the attorneys and the Court it was determined that the Motion to Suppress filed on behalf of Donald Vale contained all of the allegations that were alleged by the defendant, James P. Vale, in his Motion to Suppress the Evidence and, in addition thereto, Donald Vale's Motion to Sup-

press alleged that he was not a resident of 1826 Arts Street.

In overruling the Motion to Suppress on behalf of Donald Vale, the Court was cognizant of all of the evidence pertaining to the search and seizure inasmuch as the evidence pertaining to the search and seizure was the same evidence as had been presented and passed upon by this Court in trying the Motion to Suppress on behalf of James P. Vale.

The only new proposition presented by this Motion to Suppress was the fact that the defendant, Donald Vale, did not reside at the address 1826 Arts Street, the place that was searched.

As has been shown in the Per Curiam to Bill of Exception No. 1 filed on behalf of the defendant, James P. Vale, it is this Court's contention that the officers of the Narcotics Squad of the New Orleans Police Department were armed with arrest warrants for the arrest of Donald Vale and put a stakeout on this address with the hope of apprehending Donald Vale.

A recitation of the facts as disclosed on the trial of the Motion to Suppress on behalf of James P. Vale discloses without doubt that the police officers had probable cause to search the residence of 1826 Arts Street, having just seen Donald Vale come out of the residence, speak to someone in a car, go back into the residence and then come out again and again speak to the person in the automobile.

These officers had more than reasonable grounds and more than probable cause on which to search this residence.

It would also be noted that Donald Vale was arrested immediately in front of the residence 1826 Arts Street after he was observed by the police officers coming from the residence 1826 Arts Street.

Under these circumstances, the Court overruled the Motion to Suppress on the ground that the search was a valid search and seizure.

The next question that presented itself by this Motion to Suppress was the fact that Donald Vale did not reside at 1826 Arts Street, as his Motion to Suppress discloses.

If this was the only reason alleged in the Motion to Suppress on behalf of Donald Vale, the Motion to Suppress should have been overruled because Donald Vale had been arrested immediately in front of this address and had been seen coming from this address twice by the police officers and, therefore, they certainly had probable cause to search, having made an arrest of the defendant immediately in front of the residence from which he had just emerged.

The question of whether Donald Vale lived at the address or not, in this Court's opinion, lacks merit because if he did not live at the residence, he had no complaint whatsoever, because the Constitution of the United States and the State of Louisiana refers to unreasonable searches of a person's place of abode. The constitutional provisions do not prohibit any search being made but only unreasonable searches.

The Court is not unmindful that there is a decision by the Federal Courts to the effect that even though a person does not own or reside in the premises which are searched, nevertheless, they can move to suppress the evidence if said evidence seized in said residence or place of abode is to be used against them. This proposition, as set forth by the Federal Courts, in the opinion of this Court, is untenable when the constitutional provisions are taken into consideration. Insofar as this case is concerned, it made no difference whatsoever whether Donald Vale lived at the address of 1826 Arts Street or whether he did not live at this address because the police officers of the City of New Orleans Police Department, connected with the Narcotics Squad, had more than probable cause after observing the actions of the defendant, Donald Vale.

For the above reasons the Court overruled the Motion to Suppress and at which time the present bill of exception was reserved.

The other part of this bill of exception pertains to the introduction into evidence on the trial of the case of certain narcotic drugs which were seized during the search and seizure which has been fully covered by the

Per Curiam to this Bill of Exception and the Per Curiam to Bill of Exception No. 1 filed on behalf of the defendant, James P. Vale.

Respectfully submitted,

/s/ Rudolph F. Becker, Jr.
RUDOLPH F. BECKER, JR.
Judge, Section "E"

New Orleans, Louisiana, this
15th day of November, 1967.

IN THE CRIMINAL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA

No. 194-738 Section "E"

STATE OF LOUISIANA

vs.

JAMES P. VALE ET AL.

BILL OF EXCEPTION No. 1—Filed November 9, 1967

Be it remembered that prior to the trial of this matter, the defendant, James P. Vale, through counsel, moved the court to suppress evidence which the State intended to introduce in support of the charge alleged herein on the grounds that said evidence was obtained without a search warrant and was obtained as the result of an unlawful search and seizure; a copy of said motion to suppress is attached hereto and made a part hereof.

The court after a hearing on the said motion denied same, to which ruling and decision of the court, the defendant, James P. Vale, through his counsel, then and there excepted, making a part of the said exception the motion to suppress, the ruling of the court, and the testimony adduced on the hearing of said motion.

And the defendant, James P. Vale, through his counsel herein, having submitted this, his Bill of Exception to the District Attorney, now tenders the same to the court and prays that the same be signed and sealed by the judge of this court pursuant to the statute in such case made and provided, which is done accordingly, this 9th day of November, 1967.

/s/ Rudolph F. Becker, Jr.
Judge

IN THE CRIMINAL DISTRICT COURT
PARISH OF ORLEANS

No. 198-734, Section "E"

STATE OF LOUISIANA

versus

JAMES P. VALE

PER CURIAM TO BILL OF EXCEPTION NO. I—
November 15, 1967.

TO THE HONORABLE CHIEF JUSTICE AND THE
ASSOCIATE JUSTICES OF THE SUPREME COURT
OF THE STATE OF LOUISIANA:

On behalf of the defendant, James P. Vale, a Motion to Suppress the Evidence was filed, upon which there was a hearing, at which time the following facts were established:

On April 24, 1967, the officers from the Narcotics Squad, having arrest warrants (capias) for the arrest of Donald Vale, went to the residence at 1826 Arts Street and there secreted themselves and conducted a surveillance of said residence.

Within a short space of time, an automobile pulled up in front of said residence, 1826 Arts Street, and the driver of said automobile parked said automobile near the curbing immediately in front of said residence. Shortly after said automobile came to a stop, Donald Vale, for whom the officers had arrest warrants, came out of the residence 1826 Arts Street, walked across the sidewalk and stood at the passenger side of said automobile, conversing with the driver of said automobile. After a brief conversation, Donald Vale went back into the residence, 1826 Arts Street, and a short while later came out of the residence and approached the automobile and the person sitting in said automobile. At this time the police officers, suspecting that narcotics were being transferred, drove their automobile towards the residence of 1826 Arts Street and the automobile parked at the curbing. Upon approaching said automobile, the officers recognized the driver of the car, Arizzio Saucier, as a narcotic addict who they knew. At this point the

driver of the car tried to drive his car away, but the police vehicle pulled in front of said vehicle, causing the driver to stop.

About this time the police officers observed the driver of said automobile move his hand hurriedly to his mouth. The officers immediately alighted from their vehicle, placed Donald Vale and the other individual under arrest, and, almost immediately, Donald Vale was taken back into the residence of 1826 Arts Street and a search of said residence was begun.

While said search was being conducted, James P. Vale and his mother entered the residence, whereupon the officers conducting the search informed Mrs. Vale and James P. Vale that they were conducting a search of the premises for narcotics.

After a hearing and a disclosure of the facts as set forth above, the Court overruled the motion of James P. Vale to suppress the evidence discovered during said search.

All the law relating to searches and seizures refer to unreasonable searches and seizures.

This Court, in overruling the Motion to Suppress, under the circumstances, felt that the search of the residence 1826 Arts Street, in view of the above facts, was a reasonable search; that the officers had probable cause, under said circumstances, to search for narcotics, having seen what they believed to be a sale of narcotics take place immediately in front of the residence of 1826 Arts Street.

The narcotics officers, without any doubt, had probable cause to believe that Donald Vale had gone back into the residence after his conversation to obtain narcotics and it was not unreasonable for them to believe that narcotics were in the residence searched.

For the above reasons the Court overruled the Motion to Suppress the Evidence.

Respectfully submitted,

/s/ Rudolph F. Becker, Jr.
RUDOLPH F. BECKER, JR.
Judge, Section "E"

New Orleans, Louisiana
this 15th day of November, 1967.

[fol. 197]

IN THE CRIMINAL DISTRICT COURT
FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA

No. 198-734, Section "E"

STATE OF LOUISIANA

versus

DONALD J. VALE and JAMES P. VALE

TRANSCRIPT OF TRIAL

BY THE COURT: Is the State ready?

BY MR. HULL: The State's ready, Your Honor.

BY MR. DRAKE: Your Honor, I'd like to file a Motion to Withdraw as to . . .

(Mr. Drake approached the bench)

BY THE COURT: Ordinarily I'd allow you to withdraw, under the circumstances, but when the defendant made bond he didn't stay on bond that long and I appointed you in this case. He's in there since August. It's true I appointed you in the case prior to that date, is that correct?

BY MR. DRAKE: Yes, sir, June 16th.

[fol. 198] BY THE COURT: But he made his bond and then he was surrendered back into the confines of the Parish Prison, so I'll deny your motion to withdraw.

BY MR. DRAKE: Yes, Your Honor.

BY THE COURT: Let the motion to withdraw on behalf of Mr. Drake be filed and let the record show the Court denied his motion to withdraw.

BY MR. DRAKE: In connection with the same matter I have a Motion to Suppress Evidence I'd like to file.

BY THE COURT: There was a Motion to Suppress filed on behalf of the other defendant and we heard that, but this doesn't bar you from filing a motion on behalf of the defendant you represent. We'll let you file this Motion to Suppress and we'll fix it this morning and I'll

hear it if the District Attorney is ready to go to trial. We'll hear it outside the presence of the jury. If humanly possible, we'll try this case today if the District Attorney [fol. 199] is ready and if counsel is ready. I'll let you file this motion and set it for hearing today, which is the 14th.

BY MR. DRAKE: Yes, sir.

BY THE COURT: This Motion to Suppress would only be a question of argument of counsel. I see no evidence that would be necessary since we might take all of the allegations set forth in the motion as true and correct. I could then pass on it. I think I'll let my jury sit here and have all of you gentlemen come in my office with the defendants, and I think I can handle this situation without the necessity of transferring everyone back and forth. I think we can dispose of this in a few seconds. I'll take this matter up in my office. Is there any objection from the State?

BY MR. VOLZ: No, sir.

BY THE COURT: Any from defense?

BY MR. DRAKE: No, Your Honor.

[fol. 200] BY MR. McNEIL: No, Judge.

(THE FOLLOWING PROCEEDINGS HELD IN JUDGE'S CHAMBERS IN THE PRESENCE OF THE DEFENDANTS, THEIR COUNSEL, COUNSEL FOR THE STATE, COURT REPORTER AND MINUTE CLERK)

BY THE COURT: I've read the Motion to Suppress on behalf of Donald Vale but his motion knocks him in the head quick because he claims he does not live and reside at the place searched. He has no interest in whether the place was searched under the decisions of the United States Supreme Court. . . So the Motion to Suppress is overruled.

BY MR. DRAKE: We would reserve a bill of exception to Your Honor's ruling incorporating therein the Motion to Suppress, Your Honor's ruling and objection of counsel.

BY THE COURT: Did you want to present any evidence to this effect since the State will admit that this is correct?

BY MR. VOLZ: We would not want to be put in the position to admit that the defendant did not reside at that address.

[fol. 201] BY THE COURT: For the purpose of his Motion to Suppress.

BY MR. VOLZ: We'll admit it for the Motion to Suppress.

BY THE COURT: That's what I say, for the Motion to Suppress I'm certain the State will so admit.

(RETURN TO COURTROOM)

BY THE COURT: Is the State ready?

BY MR. VOLZ: The State has a document it wishes to file in this case, Your Honor.

BY MR. DRAKE: This is a complete surprise to me. I was not aware of the existence of a confession.

BY THE COURT: Don't state what this is at this time. I'm going to let this be filed in the record as to—mark the time that it's filed, at eleven minutes after eleven, prior to selecting a jury to try the case.

[fol. 202] BY MR. DRAKE: I'll move for a continuance based on this.

BY THE COURT: I'll deny that.

BY MR. DRAKE: Respectfully reserve a bill of exceptions.

BY THE COURT: You may have your bill. Let this document be filed. Mark the time and date when it was filed. Mark that it was filed prior to the selection of a jury.

BY MR. VOLZ: The State's ready, Your Honor.

BY THE COURT: Under the circumstances, is the defense ready to proceed?

BY MR. McNEIL: Yes, sir.

BY MR. DRAKE: Yes, Your Honor.

BY MR. HULL: Gentlemen of the jury, the law of Louisiana requires that in the prosecution in cases such as the one we are about to try today, make an opening

[fol. 203] statement. The purpose of this statement is to explain the nature of the charge involved and to set forth in general terms the nature of the evidence whereby the State intends to prove its case. You have already had the bill of information read to you and basically all it alleges is that on the 24th of April of this year, Donald J. Vale and James P. Vale did wilfully and unlawfully possess and have under their control a narcotic drug, to-wit: heroin. This is in violation of Louisiana Revised Statute 40:962, which states: "It is unlawful for any person to manufacture, possess, have under his control, sell, give, deliver, transport, prescribe, administer or compound any narcotic drug, except as provided in this sub-part". In another section of the same Revised Statute, narcotic drug is defined as follows: "Narcotic drugs means cocoa leaves, opium" and lists a number of other narcotic drugs. Opium is further defined in the same statute as "including morphine, codeine and heroin". Heroin is the narcotic which we have alleged in the bill of information. The defendants in this case, Conald Vale and James Vale, brothers, are thus charged with [fol. 204] possessing and having under their control, heroin, a narcotic drug, on the 24th of April 1967. Upon trial of this case the State will show the following facts:

On the 24th of April, 1967, police officers Laumann, Soule and Brady were staked out at 1826 Arts Street, the home of the Vales, here in the City of New Orleans. At approximately 12:00 Noon a 1958 Chevrolet drove up in front of the house, stopped, and the driver tooted the horn. The driver, Arizzio A. Saucier, backed his car into a parking space and again tooted the horn. At this point the defendant, Donald Vale, came out from 1826 Arts Street, went to the passenger side of the car, leaned over and had a conversation with Saucier. Donald Vale then returned and re-entered 1826 Arts Street and approximately a minute later, came out. He again approached the passenger side of Saucier's car and leaned into the open window. At this point the police officers left their place of concealment and approached the automobile. Donald Vale and Saucier became aware of their presence. Vale immediately turned and started to walk rapidly to

[fol. 205]. the front steps of the house. Saucier was observed placing something in his mouth. He attempted to pull his car out and into the street. Both Donald Vale and Saucier were arrested. Both men were taken inside the house and a search was conducted. About the time the search was begun, the defendant, James Vale, and Mrs. Vale, his mother, the mother of both defendants, entered the house. They were informed of the search. In the third room of the house, a man's room, and in the presence of James Vale and Mrs. Vale, Officer Laumann found three capsules in the coat pocket of a white wool suit. Officer Brady then brought Donald Vale in the room and all three Vales were shown the capsules. Officer Laumann then found a rubber prophylactic containing 171 capsules with a white powder in a brown coat. Also found was a white plastic bottle labelled "Bufferin", containing 76 capsules with a brownish white powder and a yellow finger stall containing 103 white tablets. Also found was an outfit, that is, the items used to prepare and inject heroin. Officer Brady took possession of all the seized objects. The items were later turned over to [fol. 206] Mr. John Koch, a chemist, and an expert in the field of narcotic drugs. Mr. Koch will testify that all the capsules contained heroin, a narcotic drug, and the 103 tablets contained dihydromorphinone, also a narcotic drug. Officer Soule will be qualified as an expert on the subject of the illicit use of narcotic drugs and trackmarks. He will testify that on the date both defendants were arrested their arms were examined for evidence of any injections of narcotic drugs. Both defendants' arms had trackmarks or scars left from the repeated injection of narcotics. The evidence seized in this case will be offered into evidence. At the conclusion of the trial, the State will ask that you return a verdict of guilty as to both defendants.

BY MR. DRAKE: As to the defendant, Donald Vale, we waive opening statement.

BY MR. McNEIL: Gentlemen of the jury, as Mr. Hull told you, the State is required under the law to make an opening statement. However, the defense does not have to make an opening statement and we will

waive our right to making a statement and stand on [fol. 207] the plea of Not Guilty as far as James Vale is concerned.

BY THE COURT: You do likewise, Mr. Drake?

BY MR. DRAKE: Yes, sir.

BY THE COURT: Call your first witness.

JOHN KOCH, called as a witness on behalf of the State, after being first duly sworn by the Clerk, testified as follows:

DIRECT EXAMINATION

BY MR. VOLZ:

Q. State your name, please.

A. My name is John Koch.

Q. What is your occupation, Mr. Koch?

A. I'm employed by the Coroner, Parish of Orleans, in charge of the forensic laboratories.

Q. Are you a chemist, Mr. Koch?

A. I'm a chemist, employed by the Coroner.

[fol. 208] Q. Would the defense care to stipulate Mr. Koch is an expert in the field of chemistry, chemical analysis of narcotic drugs?

BY MR. McNEIL: On behalf of James Vale we so stipulate.

BY MR. DRAKE: As to Donald Vale, we so stipulate.

BY THE COURT: Let the record show the counsel for State and defendants agreed that the witness, Mr. Koch, is an expert in the field of chemistry and analysis and that, as such, he will be allowed to testify as to his opinion in such matters. Proceed,

BY MR. VOLZ:

Q. Did you have occasion to bring anything into Court with you this morning?

A. Yes, sir.

Q. Do you have it with you?

A. Yes, sir.

Q. May I see it?

A. These are . . .

STATEMENT BY MR. VOLZ: The State will mark as Exhibit S-1 a brown envelope and ask you, can you identify that envelope?

BY THE WITNESS: Yes, sir, I can. It bears my signature on the bottom and bears information in my [fol. 209] handwriting, it bears my initials on the paper seal which I placed on the envelope.

Q. Would you open the envelope, please? Would you remove the contents? I show you what the State will mark S-2 for purpose of identification, being a spoon and ask if you can identify that.

A. Yes, sir. It bears a piece of paper which is scotch taped to the spoon with my initials "J.K." and the case number assigned to this piece of evidence and the outer plastic envelope has my initials and the same case number assigned to the case.

Q. Where did you receive . . . Did you have occasion to run a chemical analysis on that spoon?

A. That's correct. I washed the bowl of the spoon out and ran a chemical analysis on the washings.

Q. What were your results?

A. This spoon was negative for the presence of a narcotic substance.

Q. I show you what the State marks S-3 for identification, being a package wrapped in brown paper and ask if you have seen that item before?

[fol. 210] A. Yes, sir. This piece of paper, on the brown paper, bears my initials "J.K." and the case number P-1202 and the plastic type envelope bears the same initials and the case number P-1202.

Q. The brown package inside that envelope, what is that?

A. What is it?

Q. Yes.

A. If I remember correctly, it contains the medicine dropper and cotton and possibly a couple of needles, hypodermic needles.

Q. Open that, please.

A. It contains a medicine dropper and two hypodermic needles in a plastic folder.

Q. Put all that back inside the plastic envelope so it won't get moved around too much. Could you just leave it open? Just put the items back inside the envelope without unwrapping it. Did you have occasion to run any chemical tests on the eyedropper and the hypodermic needles?

A. I ran a chemical analysis on the washings from the interior of the medicine dropper. I did not run a chemical analysis on the two hypodermic needles. The [fol. 211] reason there was no analysis run on the two hypodermic needles was because of the very small amounts that may be present at the pore of the needles, we could only get a preliminary test and not a confirmatory test, and we do not report on preliminary examinations.

Q. What were the results of the washings from the eyedropper?

A. The medicine dropper was found to be negative for the presence of narcotics.

Q. I show you, Mr. Koch, what I'll mark S-4 for identification, being what apparently are three capsules in this package and ask if you can identify that?

A. Yes, sir. This bears a paper tag. The tag has my initials "J.K." and the case number P-1202, and the outer envelope bears the same information, the case number P-1202, and my initials.

Q. Did you have occasion to run a chemical analysis of the contents of these capsules in that package?

A. Yes, sir, the contents of each of these three capsules was examined chemically.

Q. And what were your findings?

[fol. 212] A. They contained a narcotic drug which is acetylated opium and one of the constituents which we identified of the acetylated opium was the presence of heroin.

Q. Those capsules contain heroin?

A. Yes, sir.

Q. I show you S-5 for identification, being a package containing a brown rubber type container and ask if you can identify that?

A. Yes, sir. The paper tag attached to the brown container bears my initials and the case number P-1202, and the cellophane or plastic package in which it's contained bears the same information.

Q. What is contained within that rubber package?

A. If I remember correctly . . .

Q. You can take it out and examine it.

A. White tablets. Yes, round white tablets are present in this one.

Q. How many?

A. I don't know offhand. There are numerous tablets.

Q. Numerous white, small tablets?

A. Yes, sir.

Q. Did you have occasion to run a chemical analysis on those tablets?

[fol. 213] A. Yes. I selected four of these tablets at random and ran a chemical analysis on the contents of these four.

Q. Were the four apparently exactly, at least to your vision, were they exactly like the others or similar?

A. They were all identical.

Q. What were your findings of the tablets you examined?

A. These four contained a narcotic drug which is known as dihydromorphinone. It's sold under the trade name of dilaudid.

Q. Is that a narcotic drug?

A. Yes, it's a morphine derivative.

Q. I show you what the State has marked S-6 for identification, being numerous white capsules contained in a rubber container, and ask if you have seen this item before?

A. Yes, sir. The paper tag around the object which bears my initials "J.K." and the case number P-1202 and the plastic envelope bears the same information.

Q. Did you have occasion to run a chemical analysis on the contents of those capsules?

A. Of the total number of capsules in this container, I selected four at random. They are identical in shape and size and appearance and appearance of the contents.

The four that were selected were examined and found to contain acetylated opium which, in turn, contains heroin.

[fol. 214] Q. These are heroin capsules in your opinion?

A. They contain heroin, yes, sir.

Q. I show you what the State will mark S-7 for identification, being a medicine container, a plastic bottle, and ask if you can identify that?

A. Yes, sir. This paper tag which is on the container bears my initials "J.K." and the case number P-1202.

Q. Mr. Koch, would you open that container and tell us what's inside?

A. There are numerous clear capsules containing brownish powder.

Q. Did you have occasion to run a chemical analysis on those capsules?

A. Yes, sir. In this particular case, again I selected four of these capsules at random, all of the capsules being identical in size, shape and appearance and appearance of the contents. The four that were selected were analyzed and found to contain acetylated opium which, in turn, contains heroin.

Q. Mr. Koch, in relation to all of the items, S-1 through S-7, where did you obtain these items?

[fol. 215] A. I obtained them from this sealed envelope which was given to me in the Coroner's Office here in the Parish of Orleans by Officer Brady of the New Orleans Police Department, Narcotics Division.

Q. Did you initial it when he gave it to you?

A. I did not initial it but at the time he turned the evidence over to me I put in my writing below the double line the name of the officer, the date, the time and the location here in the building where the evidence was turned over to me and my signature. As soon as this evidence was entered in my evidence book, a case number was assigned to it and this number was placed on the evidence envelope. At the time he gave it to me his name, the date and time and the location in the office and my signature was placed on the envelope in his presence.

Q. Was the envelope sealed when he gave it to you?

A. Yes, it was sealed across the back with red sealing wax which I left intact. I opened the envelope by making an incision in the front to open it. After the specimens were removed and examined, I placed them back in the envelope and put the paper seal and made my initials across the seal and the envelope.

[fol. 216] Q. Have all of these items been in your custody since they were turned over to you by Officer Brady?

A. Yes, sir.

Q. Until you brought them to Court this morning?

A. That's correct.

STATEMENT BY MR. VOLZ: Tender the witness.

STATEMENT BY MR. McNEIL: I have no questions on behalf of James Vale.

BY MR. DRAKE: We have no questions.

CLINTON E. LAUMANN, called as a witness on behalf of the State, after being first duly sworn by the Clerk, testified as follows:

DIRECT EXAMINATION

BY MR. HULL:

Q. State your name, please.

A. Clinton E. Laumann.

Q. What is your occupation?

A. Patrolman, New Orleans Police Department.

[fol. 217] Q. You work in any particular section?

A. Assigned to the narcotics division.

Q. How long have you been so assigned?

A. Three years in January.

Q. Do you know the defendants in this case, James Vale and Donald Vale?

A. Yes, sir, I do.

Q. If they're present in Court, point to them?

A. The two gentlemen seated before the bar.

Q. Let the record show the witness identified the defendants. Officer Laumann, directing your attention to the 24th of April of this year, 1967, did you have occasion to observe any unusual incident involving the defendants at 1826 Arts Street here in the City of New Orleans?

A. Yes, sir, I did.

Q. State exactly what happened.

A. About 11:45 A.M. on Monday, April 24, 1967, I proceeded in company with my partners, Patrolmen Fred Soule and Ronald Brady to the area of 1826 Arts Street. We took up a position on the corner of this address in the cemetery. At approximately 12:00 we observed a [fol. 218] 1958 Chevy drive up in front the house and toot the horn and then continued past the house a little bit and back down just in front of the house and tooted the horn. At this time the defendant, Donald Vale, wearing a brown suit, came out, leaned into the car on his elbows, and had a conversation with the driver. After about two minutes he turned and went back in the house again. After approximately another minute he came back out and leaned into the car, the window of the car, on his elbows again. As this was happening we got in our car and proceeded towards them and as we approached, about two or three car lengths away, Donald Vale and the driver of the vehicle who I recognized at this time as Andrew Saucier, looked up and became aware of our presence. At this time Donald Vale turned and walked rapidly toward the house.

BY THE COURT: Go down and put your hand on the one you say is Donald Vale.

BY THE WITNESS: This is Donald Vale. He's also known to us as "Bim". As we approached within two or three car lengths, Donald Vale turned and started walking rapidly back towards the house. Andrew [fol. 219] Saucier, the driver of the car, took his right hand and placed something in his mouth and began to work his mouth on it, like chewing it. He also put the car in gear and started into the street, but our car was blocking it and when he seen he couldn't get around us, the car rolled back and he stopped. I got out the car

along with Soule and proceeded behind Donald Vale and called "Bim", which is his nickname and told him "Stop" and approached him on the sidewalk in front of his house and identified ourselves as police officers.

Q. How were you dressed at this time?

A. In plain clothes. Pants and shirt.

Q. Go ahead.

Q. He knows us and we told him we were police and we placed him under arrest and told him we had arrest warrants for his arrest. In the meantime, Officer Brady went to the driver's side of the Chevrolet and removed Saucier from the driver's side and brought him to the sidewalk. Both subjects were told by me and Officer Soule of their rights. And also of the arrest warrants. Both were explained. We had arrest warrants and advised them of their rights and then proceeded up the [fol. 220] frontsteps of the Vale house and entered the living room. As we got into the living room, I proceeded on to the back of the house and checked under the beds and behind the doors and anything I thought where someone would hide. I also went in the back yard and in the side alley and looked down the alley. And when I came back inside, Mrs. Vale, the mother of Donald, in company with James Patrick Vale, the Gentleman seated to the left of the table, the brother, had come to the house. We explained our presence and advised both James Patrick and Mrs. Vale of the arrest warrants we had and we told them we were going to search the house because of the search warrants we had and the activity we had seen Donald Vale and Saucier conduct outside the house.

BY THE COURT: When you advised the two men of their rights on the sidewalk, which two men are you talking about?

BY THE WITNESS: Andrew Saucier and Donald Vale.

BY THE COURT: And what did you advise them their rights were?

BY THE WITNESS: We advised them they need not make any statement, that they were under arrest and need not make any statements. Five points. They need not make statements, anything they tell us could be used

[fol. 221] against them in Court, they had a right to an attorney, an attorney to be present while questioning and if they couldn't afford an attorney, the Court would appoint one for them. Both Donald Vale and Saucier were explained this in front of the house and up the steps and into the living room where the arrest was made. Upon the arrival of James Patrick and his mother, they were advised of our reason for being there and Officer Brady had the arrest warrants and they were shown to both Donald and Pat and his mother, I had made a check through the house when I first went in there to see where I wanted to search, to try to get my feet on the ground to see how things were. I proceeded back to the third room of the house, which was a bedroom and in my mind I thought it was a man's bedroom. That's why I went back there to search. During the course of my search I went to a wooden cabinet against the wall. A piece of furniture with drawers on the left side and a big door on the whole right side. On searching the cabinet and putting my hand into a white wool coat, I removed a piece of cellophane containing three capsules with brownish, off-white powder. This was done in the presence of James Patrick Vale and his mother. [fol. 222] Officer Brady brought Donald Vale into the room and the cellophane and the capsules were shown to all three of the people. All three of the persons. I asked whose were they and at this time Donald Vale claimed ownership. He said they were his. The three capsules with the white powder were his. I then proceeded to search further and I put my hand into a brown suit hanging in the locker in the inside and I felt a rubber prophylactic with something in it. I took my hand out and took the suit off the hanger and asked whose was it and Donald Vale stated it was his suit and I put my hand back into the left inside breast pocket and removed the rubber prophylactic containing 171 clear capsules with an off-white powder . . .

BY MR. HULL:

One minute please. Don't say anything at this point regarding what either defendant may have said. State exactly what happened.

A. After a conversation about the brown suit, I put my hand back into the pocket and removed the rubber prophylactic with 171 capsules with powder, a plastic [fol. 223] Bufferin bottle containing 76 clear capsules with powder and a yellow finger stall containing 103 small white tablets. Again, the defendants were questioned as to ownership . . .

Q. Before any statement was made by the defendant, Donald Vale, . . . You have already testified that you advised him of his rights at the time of his arrest, is that correct?

A. Yes, he was.

Q. At the time any statement was made by him, was any force or coercion used by yourself or any of the other police officers to get the statement from him?

A. No, sir.

Q. Was any inducement given to him to make any statement at any time?

A. No, sir.

Q. Having testified as to your advice to the defendant concerning his rights and lack of any coercion on your part, would you state what statements, if any, were made by the defendant, Donald Vale?

BY THE COURT: Would you like to cross him on the predicate? You have the right to cross him on the predicate if you desire to do so. Either one or both of you.

[fol. 224] BY MR. DRAKE:

Q. At the time that you allegedly appraised the defendants of his rights, did you advise him he had a right to counsel to be present at that time?

A. Yes, I did.

Q. Did you allow him to use the telephone or any other means of communication to contact an attorney?

A. No, sir. He didn't ask to use it either.

Q. Did you advise the defendant that he could only use the phone after he was booked?

A. I don't remember my exact words. To the best of my knowledge, he was told he could use the phone,

but I don't believe, I can't remember exactly when, but he didn't ask to use it then.

Q. Do you remember making a call on the police radio relative to ascertaining an attorney? Was there any discussion on the police radio as to getting an attorney for the defendant, Donald Vale?

A. Not by me.

Q. Were you advised that Mr. Shea was attempting to contact Mr. Vale at this time?

[fol. 225] BY MR. VOLZ: Object. Hearsay. Unless it came from the defendant.

BY THE COURT: If you know that of your own knowledge. Was there any attempt on the part of anybody else in your presence?

BY THE WITNESS: I don't know this, but Mr. Shea did meet us at the office this day. Evidently, he was trying to contact him. He met us in the office, but I don't know that he was trying to get him.

BY MR. DRAKE:

Q. You stated before you advised the defendants of their rights as you were walking to the porch, up the steps. Was this a moving conversation?

A. It was. Yes, sir. It started in front of the house on the sidewalk and continued up the steps and into the living room of the house. It was a moving conversation bordering on an argument because the defendant said he didn't think we had the right to search the house and we were explaining his rights along with what we thought was our probable cause. The activity we seen and the arrest warrants. All of this was covered, along with the rights, up to the house.

[fol. 226] STATEMENT BY MR. DRAKE: No further questions.

BY THE COURT: Any questions, Mr. McNeil?

BY MR. McNEIL: None at this time. This is on the question of the statement made by Donald Vale.

BY THE COURT: The Court will hold that the statement made by the defendant to this witness is admissible in evidence.

BY MR. DRAKE: We object and reserve a bill of exceptions.

BY THE COURT: You may have your bill. Proceed.

BY MR. HULL:

Q. State what statements, if any, were made by the defendant, Donald Vale, inside the house.

A. When the first three capsules were found in the white wool coat in the locker, Donald Vale was in the living room and he was brought back to the bedroom [fol. 227] where we were, along with James Patrick and the mother and all three persons were shown the capsules and I asked him whose was it and Donald Vale claimed ownership and at this time I turned to the mother and said, "Whose room is this?" and she said . . .

BY THE COURT: Don't say anything the mother said. I'll rule you can't testify as to what the mother said. Just say what this defendant said and nobody else. Confine yourself to that. Take him over.

BY MR. HULL:

Q. After the initial statement by Donald Vale, were there any other subsequent statements made on the same occasion?

A. Yes, sir.

Q. What were they?

A. I then proceeded into the brown suit in the locker and when I removed the suit and I pulled out the handful of capsules—I again asked whose suit it was and again Donald Vale claimed ownership of the brown suit and I pulled out the Bufferin bottle and the rubber and the rubber finger stall and asked whose was it and he claimed the ownership of this also. He said it was his [fol. 228] also. I also asked him if he had an outfit and he said, "You got everything else. I might as well give you that too". At this time Donald Vale brought Officer Brady into the bathroom and he turned over the outfit. The hypodermic paraphernalia.

Q. Officer Laumann, I'll show you each of these exhibits and ask if you can identify them. First, I show you Exhibit 2 and ask if you can identify that.

A. This is the spoon taken in the bathroom by Officer Brady I can identify it by my initials "C.E.L."

Q. I show you State Exhibit 3 and ask if you can identify this?

A. This is the outfit also retrieved by Brady in the bathroom. I also identify it by my initials "C.E.L."

Q. I show you State Exhibit 4 and ask if you can identify this?

A. This is a piece of cellophane with the three capsules removed from the white wool suit in the locker. Again, I identify it by my initials "C.E.L."

Q. I show you State Exhibit 5 and ask if you can identify this.

A. That's the yellow finger stall removed from the pocket containing several white tablets.

[fol. 229] Q. I show you State Exhibit 6 and ask if you can identify that?

A. It's a rubber prophylactic containing 171 capsules removed in the inside pocket of the brown suit and also bears my initials "C.E.L."

Q. I show you State Exhibit 7 and ask if you can identify this?

A. This is the plastic Bufferin bottle with the 76 capsules also removed from the brown suit pocket. Again, it has my initials.

Q. Which of these items did you personally take?

A. I found the bottle, both rubbers and the cellophane wrapper.

Q. State Exhibits 4, 5, 6 and 7, is that correct?

A. Four, five, six and seven, yes, sir.

Q. What did you do with these items after you took them?

A. They were found at 12:10 P.M. and immediately turned over to Officer Brady for processing.

Q. Who is Officer Brady?

A. My partner.

Q. And what was done with the first two exhibits found by Officer Brady, to your knowledge? Exhibits 2 and 3.

A. They were also retained by him until we could get to the office and mark them and seal them in the envelopes.

[fol. 230] Q. The automobile that you used to arrive at 1826 Arts Street. Was this a marked vehicle or unmarked vehicle?

A. Unmarked. A '64 Ford.

Q. 1826 Arts Street, is this in the City of New Orleans?

A. Yes, sir, it is.

STATEMENT BY MR. HULL: Tender the witness.

CROSS-EXAMINATION

BY MR. DRAKE:

Q. You stated that on April 24th that you had the residence of 1826 Arts under surveillance?

A. Yes, I did.

Q. For what reason were you keeping this residence under surveillance?

A. We had two arrest warrants for Donald Vale, the occupant of 1826 Arts and we were watching to see to make sure he was there before we moved. If we moved before we knew he was there, we'd lose everything.

Q. You were looking for Donald Vale?

A. Yes, sir.

Q. On the basis of these warrants?

A. Yes, sir.

[fol. 231] Q. You stated before you're personally acquainted with Donald Vale or have known him through your work?

A. Yes, sir, I've known him well.

Q. Do you know where Donald Vale resides?

A. Yes, sir. I know what he told me five or six times, 1826 Arts Street.

Q. He stated to you he lived at 1826 Arts?

A. Yes, sir, on five or six occasions.

Q. On this particular day? On April 24th?

A. The date of this arrest he also told me 1826 Arts.

Q. The only purpose you had in being at that particular vicinity on this date was to arrest Donald Vale based on the warrants you had in hand, is that correct?

A. That's why we proceeded there. Yes, sir.

BY MR. McNEIL:

Q. Did you have any arrest warrants for James Vale?

A. No, sir.

Q. He had done nothing up to the 24th that you wanted him for, is that right? You didn't want him for anything on the 24th? Did you have a warrant for his arrest?

A. I didn't have a warrant, no, sir, but . . .

[fol. 232] BY THE COURT: That's all. Just answer the question.

BY MR. McNEIL:

Q. This room where you found these capsules and you say it was a bedroom, is that right?

A. Yes, sir.

Q. How many beds were in the room?

A. Two beds.

Q. And how many lockers were in the room?

A. I remember the one I searched. The one where the stuff was found. I don't remember what else was in the room. I do remember there were two beds and one locker I remember.

Q. Stop and think carefully. Is it possible there were two lockers in the room?

A. It's possible.

Q. Isn't it a fact there were two lockers in the room?

A. It's possible there were two. I definitely remem-

ber the one locker I found the stuff in. I don't remember if there were two. I remember one.

Q. The two suits in which you found the items you identified were found in one locker?

A. That's correct, sir.

[fol. 233] Q. And all of these items were identified by Donald Vale as belonging to him?

A. Yes, sir.

Q. And the coat in which they were found, that was identified as belonging to Donald Vale by him?

A. Yes, sir.

STATEMENT BY MR. McNEIL: I have no further questions.

Q. Wait, I have one more question. How many bedrooms were there in the house?

A. The second room in the house was a bedroom with a large bed in it and they had a dresser in it like a lady's with nice things on it. There was a bedroom in the third room in the back with two beds and one locker I remember.

Q. This is the one you've described here?

A. Yes, sir.

Q. There were just two bedrooms, the one with the big bed and the other?

A. Yes, sir.

Q. Did you identify who else lived at the address 1826 Arts?

A. Yes, sir, we did.

[fol. 234] Q. Did Mr. and Mrs. Vale, the mother and father of the two defendants, live there?

A. We spoke to Mrs. Vale.

Q. But I say Mr. and Mrs. Vale.

A. I spoke to Mrs. Vale. She said she lived there and she also told me Patrick Vale lives there.

Q. I'm simply asking who else did you identify who lived at the house other than Patrick Vale and Donald Vale?

A. I spoke to Mrs. Vale and she said it was her house. Patrick lived there and Donald didn't.

Q. Donald did not?

A. That's what she said.

STATEMENT BY MR. McNEIL: No further questions.

BY MR. DRAKE:

Q. Your answer to that question was Donald did not live at 1826?

A. I said I spoke to Mrs. Vale as to whose room this was and she said it was her house and she said Patrick Vale, the gentleman in the middle, lived in this room and she said Donald doesn't live here.

[fol. 235] Q. She meant as to the house or that particular room?

A. She meant that particular room.

Q. Did you pursue it any further to find out . . .

A. No, sir, I thought I had enough.

STATEMENT BY MR. DRAKE: No further questions.

BY MR. McNEIL:

Q. Now, you say there were only two bedrooms, the one with the two beds and the other with the single, is that right?

A. Yes, sir.

Q. Now, was there any place Donald Vale could have lived other than that one room with the two beds if Mr. and Mrs. Vale lived in the single bedroom?

A. He could have lived anywhere in the house, but in my opinion . . .

Q. I asked if there was any other room where he could have lived.

BY MR. VOLZ: I object, Your Honor. That's calling for opinion. He just stopped him from giving an opinion. That's asking for an opinion—if he could have lived . . .

[fol. 236] BY THE COURT: I'll sustain it.

BY MR. McNEIL:

Q. I'll try to rephrase it. Was there any other bedroom in the house occupied or could have been occupied by anyone in the house?

BY MR. VOLZ: Same objection. It's the same question.

BY THE COURT: You can ask if there's any other bedroom in the house but he'd be speculating as to who lived where. Put the direct question to him without requiring this witness to state his opinion.

BY MR. McNEIL:

Q. You've identified two bedrooms, one with a single bed or large bed and another with two beds with a locker where you found the items.

A. Yes, that's correct.

Q. Was there any other bedroom in the house other than the two bedrooms you've identified?

A. No, sir.

STATEMENT BY MR. McNEIL: No further questions.

[fol. 237] RE-DIRECT EXAMINATION

BY MR. HULL:

Q. When you refer to Patrick Vale, are you referring to James Patrick Vale?

A. I meant James Patrick Vale.

Q. The defendant on the farther side?

A. Yes, sir.

STATEMENT BY MR. HULL: No further questions, Your Honor.

RONALD BRADY, called as a witness on behalf of the State, after being first duly sworn by the Clerk, testified as follows:

DIRECT EXAMINATION

BY MR. HULL:

Q. State your name, please.

A. Ronald Brady.

Q. Your occupation?

A. New Orleans police officer..

Q. How long have you been with the police department?

A. Over five years.

Q. In what division do you work?

A. Narcotics Division.

Q. Do you know the defendants in this case, Donald Vale and James Vale?

A. Yes, I do.

[fol. 238] Q. If they're present in Court, point to them, please.

A. Donald Vale's the second subject from the right, and James Patrick Vale is the the third subject.

Q. Let the record note the witness properly identified the defendants. Directing your attention to the 24th of April of this year, did you have occasion to observe any unusual incident involving the two defendants at 1826 Arts Street here in the City of New Orleans?

A. Yes, sir.

Q. State what happened exactly.

A. On that morning I had in my possession two arrest warrants for Donald Vale. Officer Laumann, Soule and myself, at about 11:45 that morning, went into the area of 1826 Arts Street and took up a surveillance. At about 12:00 noon I observed a '58 green Chevrolet pull up in front of the address. At this time the horn blew on the car and the driver drove up and then backed into a parking place and again blew the horn. The second time the horn was blown, I observed Donald Vale come out [fol. 239] the address of 1826 Arts. He walked to the passenger side of the car and leaned into the window. Shortly after this he returned to the house and he was inside the house for about a minute or so and he came out and stood on the porch and looked up and down the street and walked to the automobile and remained in the car and leaned in the window again. At this time Officer Soule, Laumann and myself drove up in the police vehicle and as we neared the vehicle, two or three car lengths, Donald Vale and Saucier, the driver of the Chevrolet, turned and looked at us. As they did, I observed Saucier

place something into his mouth with his right hand and Donald Vale turned and started to walk off toward the address. We immediately got out of the car and I walked over to the driver's side of the automobile and identified myself to the driver and Officer Laumann and Soule, I heard them holler to Donald Vale to stop. I placed the driver of the car under arrest and walked him over to where the officers had Donald Vale and we started going up the steps and at this time we were advising Donald [fol. 240] Vale we had two arrest warrants for his arrest and Officer Laumann then advised him of his rights as we were walking up the steps.

BY MR. DRAKE: He's testifying to what Officer Laumann advised the defendant. It's hearsay.

BY THE COURT: He's not saying what he said. He's saying what he heard.

BY MR. VOLZ: It's in the presence of the defendant anyway, Your Honor.

BY THE COURT: That wouldn't make any difference. If it's hearsay, it's hearsay. Suppose you testify and don't testify as to what anybody said until I tell you.

BY THE WITNESS: Yes, sir.

BY THE COURT: Proceed.

BY MR. HULL:

Q. State what happened after this.

A. We then entered the front room of 1826 Arts and I showed the two arrest warrants to Donald Vale and also spoke with him and advised him of his rights and at this time Officer Laumann walked to the . . .

[fol. 241] BY THE COURT: When you advised him of his rights, what did you tell him?

BY THE WITNESS: I told him he didn't have to say anything. That anything he said could be used against him in Court and also that he had the right to an attorney and to have an attorney present at the time of any questioning. And at this time Officer Laumann walked to the rear of the address and I stayed in the front room with Officer Soule and Donald Vale and Sauzier. As Officer Laumann was coming back to the front room, I observed James Vale and his mother, Mrs. Vale,

walking up the steps of the house. They entered the house and at this time we advised Mrs. Vale and James Vale as to our reasons for being in the house and I advised them we had two arrest warrants for Donald Vale and we were going to conduct a search of the house. Officer Laumann and myself and James Vale and Mrs. Vale walked to the rear of the house. James Vale had a bag of groceries, I believe it was, and he walked in the kitchen and placed them on the table. We then asked them to accompany us while we conducted the search. We were in the rear bedroom, I think it was, at the time and James Vale sat on the bed while Officer [fol. 242] Laumann started to conduct a search and Mrs. Vale was standing on my left and I was standing watching Officer Laumann. Officer Laumann then started searching, I believe it was a cedar robe, with on one side clothes hanging and drawers on the other side. I observed Officer Laumann remove from one of the coats or suits hanging in the closet a piece of cellophane with three capsules in it. After I seen this, I walked to the front room and asked Donald Vale to come to the rear bedroom. At this time we walked back there and Officer Laumann showed it to James Vale and Donald Vale. Officer Laumann then continued his search and removed a rubber prophylactic which contained approximately 171 capsules out of a coat pocket. Inside a coat, I believe it was, I didn't see exactly where he removed it from. He also removed a plastic Bufferin bottle with 76 capsules, I believe, and also a yellow finger stall with 103 small white tablets. After this was found, I spoke with Donald Vale and after speaking with him, he led me into the bathroom which was right next to the bedroom. At this [fol. 243] time, he pointed to a small, I believe it was a white cabinet on the second shelf and I reached underneath and removed a metal spoon and glass eyedropper wrapped in brown paper and plastic needle holder with two needles and I walked back into the bedroom with Donald Vale and Officer Laumann had given me the rest of the evidence which I held onto myself.

BY MR. HULL:

Q. Officer Brady, I'd like to show you these exhibits and ask if you can identify them. First, State Exhibit 2.

A. Yes, sir. This spoon and the piece of paper has my initials and the date on it.

Q. Where was this taken from?

A. From the metal cabinet on the second shelf on the bottom, underneath some towels.

Q. In the bathroom?

A. Yes, sir.

Q. I show you State Exhibit S-3 and ask if you can identify this?

A. Yes. This is also the glass eyedropper and the two needles that I recovered from the bathroom on the second shelf. It bears my initials and the date.

[fol. 244] Q. The defendant, Donald Vale, was present at this time?

A. Yes, sir, he was.

Q. I show you State Exhibit S-4 and ask if you can identify this.

A. Yes. This also bears my initials and the date 4-24-67.

Q. From whom did you receive that?

A. I received that from Officer Laumann.

Q. I show you State Exhibit 5 and ask if you can identify that.

A. I don't see my initials on here. This is similar to the one Officer Laumann turned over to me.

Q. I show you State Exhibit S-6 and ask if you can identify it.

A. Yes, sir. This is evidence that Officer Laumann turned over to me in the bedroom of the house and bears my initials and the date 4-24-67.

Q. I show you State Exhibit 7 and ask if you can identify it?

A. Yes. This also bears my initials and the date 4-24-67.

STATEMENT BY MR. HULL: I would like the record to note that the District Attorney has taken out a piece of paper from the original folder, S-1, in which

[fol. 245] all of these documents were placed and on this is marked S-5 and S-5 is the document or item of evidence that the witness said he didn't notice his initials on. All of the other items being identified by the witness. I would like the record to show that.

BY THE COURT: So ordered.

BY MR. HULL:

Q. I show you this tag with Exhibit 5 and see if you can identify it now.

A. This tag bears my initials "R.C.B." and the date 4-24-67, and this yellow finger stall is similar to the one given to me by Officer Laumann on this date.

Q. As regards all of these items, what was done with them?

A. They were kept by myself until we returned to the Narcotics Division Office and this envelope was typed up by me and placed in the evidence envelope and kept by myself until I turned it over to Mr. Koch.

Q. I now show you State Exhibit S-1 and ask if you can identify this?

A. Yes. This is the envelope I placed the evidence in. This envelope I typed up and placed the evidence into and it was turned over to Mr. Koch on the 26th at 2:00 P.M., and it bears my signature.

[fol. 246] Q. Did that envelope contain all of these items?

A. Yes, sir, it did.

Q. Exhibits 2 through 7?

A. Yes, sir.

BY MR. HULL: At this time the State offers into evidence Exhibit 1 through 7, and for the purpose of objections, I will offer each individually at this time. At this time the State offers into evidence State Exhibit 1.

BY THE COURT: Any objection?

BY MR. DRAKE: No objections.

BY MR. McNEIL: No, Your Honor.

BY THE COURT: Let it be entered.

BY MR. HULL: At this time the State offers into evidence State Exhibit 2.

BY MR. McNEIL: Is that the spoon?

BY MR. HULL: Yes.

[fol. 247] BY MR. McNEIL: We object. It has no relevancy in view of the testimony of Mr. Koch, who testified there was nothing on the spoon.

BY THE COURT: I'll overrule your objection. Let it be filed in evidence.

BY MR. McNEIL: Reserve a bill.

BY MR. DRAKE: Reserve the same bill, Your Honor.

BY MR. HULL: The State now offers in evidence State Exhibit 3.

BY MR. DRAKE: I offer an objection to that.

BY THE COURT: On what ground?

BY MR. DRAKE: It's not in the preview of the charge. He's charged with possession of heroin, not hypodermic needles.

BY MR. McNEIL: We'll join in the objection.

BY THE COURT: I'll overrule it.

BY MR. DRAKE: Reserve a bill.

[fol. 248] BY THE COURT: You may have your bill. Let it be admitted in evidence.

BY MR. HULL: I now offer in evidence State Exhibit 4.

BY MR. McNEIL: We have no objection.

BY MR. DRAKE: No objection.

BY THE COURT: Let it be offered in evidence without objection.

BY MR. HULL: I now offer in evidence State Exhibit 5.

BY MR. McNEIL: We have no objection.

BY MR. DRAKE: I object. If my memory serves me correctly, that this is not heroin. I object on the ground that it's not narcotics.

BY THE COURT: The Court will sustain the objection as to 5. It's not admitted in evidence.

[fol. 249] BY MR. HULL: I now offer in evidence State Exhibit 6.

BY MR. McNEIL: We have no objection.

BY MR. DRAKE: No objection.

BY THE COURT: Let it be filed in evidence.

BY MR. HULL: I now offer in evidence State Exhibit 7.

BY MR. McNEIL: No objection.

BY MR. DRAKE: No objection.

BY THE COURT: Let it be filed in evidence. If you want the jury to see them, show them now.

STATEMENT BY MR. HULL: Tender the witness, Your Honor.

[fol. 250] CROSS-EXAMINATION

BY MR. DRAKE:

Q. Officer Brady, you stated that on the morning of April 24th you went to the residence at 1826 Arts Street. For what purpose did you go to this residence?

A. I had in my possession two arrest warrants for Donald Vale.

Q. Would you explain to the Court the nature of this arrest warrant?

A. These arrest warrants were capias issued by Judge Bagert, I believe, in the amount of \$50,000.00 each for two cases and they were issued by the Judge and sent to the Sheriff's Office and I went to pick him up.

Q. This capias is in the nature of a pickup order, is that correct?

A. That's correct, sir.

Q. It does not allege a specific offense?

A. Yes, sir. They were for specific offenses.

Q. I'm talking about the capias now. Does it charge a certain crime or is it just a general pickup order?

[fol. 251] A. They had the charge on the capias, for each capias we had.

Q. To your knowledge, do you know what this charge was?

A. Yes, sir.

Q. And it was on the strength of this warrant that you went to 1826 Arts Street to arrest Donald Vale, is that correct?

A. Yes, sir.

Q. Were there any other parties named in this arrest warrant?

A. None than the two I had for Donald Vale.
Q. To your knowledge, does Donald Vale live at 1826 Arts Street?
A. I felt that he did, yes, sir.
STATEMENT BY MR. DRAKE: No further questions.

BY MR. McNEIL:

Q. Did these two arrest warrants you had have any connection with the items S-2 through 7 offered in evidence here?

A. No, sir.

Q. In other words, these items had no connection with the warrants you had for Donald Vale's arrest?

[fol. 252] A. That's right, sir.

Q. And you had no warrant for Saucier's arrest?

A. No, sir, I didn't.

Q. Now, the bedroom where these items were found by Officer Laumann, what was in that bedroom?

A. To the best I can remember, it had two beds and a closet which one side had clothes hanging and the other side with drawers in it, I believe.

Q. Was it a closet in the wall or like a locker?

A. It was like a locker. I don't believe it was in the wall.

Q. Was there any other clothes locker besides that one?

A. In this one room?

Q. Yes.

A. I believe they did. I believe I was standing right next to a cedar robe.

Q. Weren't there, in fact, two lockers?

A. I believe so.

Q. Were there any other bedrooms in the house besides the bedroom with the two beds?

A. Yes, sir.

Q. What bedroom was that?

A. As you enter the house, there's a front room and adjoining the front room is a bedroom with a bed in it.

[fol. 253] Q. Double bed or single bed?

A. I believe it was a double bed.

Q. Any other bedroom besides the one with the double bed and the one with the single beds and two lockers?

A. I didn't see any, no, sir.

Q. Were any fingerprints made of the items when you took them from the locker?

A. No, sir.

Q. No fingerprints were taken?

A. No, sir.

Q. Is that normal procedure to take fingerprints where you have to determine the identity of property? Would it be normal if you wanted to determine who the owner was of a piece of property or who handled it, would the taking of fingerprints be a standard procedure?

A. We have taken fingerprints in the past. In cases I've handled, not too often. In most cases we haven't taken fingerprints.

Q. You haven't taken fingerprints in this case?

A. No, sir, we didn't.

[fol. 254] Q. You had started to say a while ago that when the items were picked up for identification and at that point you were stopped in stating what was said. I'd like to ask you what was said when you said Officer Laumann picked up the items and he showed it, you said, to Mrs. Vale and James Vale and Donald Vale, is that correct?

A. Yes, sir.

Q. And what happened then when Officer Laumann presented these items for identification?

A. At this time Donald Vale stated that it was his.

Q. Did he say that in respect to all the items?

A. After it was all found, he did say all of it belonged to him. Yes, sir.

Q. And did he identify the two coats? A white suit, and a brown suit I believe were identified.

A. I remember the one was I believe a white suit, he said it was his when it was taken out of the closet.

Q. How about the brown suit?

A. I don't recall whether he said it was his or not.

Q. All of the items were identified as his though?

A. Yes.

[fol. 255] Q. And you say after all of the items were identified, you say Donald Vale took you to the bathroom and showed you something else?

A. Yes, sir.

Q. That was the hypodermic needle?

A. That's correct.

Q. Before you left you arrested James Vale, too, is that correct?

A. He was arrested at the time the three capsules were found.

Q. He was arrested right there on the scene after Donald Vale identified the items as belonging to him?

A. If I remember correctly, as they were taken out of the coat, Officer Laumann seen them, if I remember correctly, and I believe he placed James Vale under arrest and I walked to the front. I believe he arrested him before Donald Vale got to the back. I believe he arrested him before Donald Vale got to the back. I can't be positive.

Q. But he was arrested when Officer Laumann found the items in the coat and after Donald Vale identified them as his?

[fol. 256] A. I believe he was arrested before Donald Vale stated they were his. I can't be positive but I feel sure this is what happened. Before I walked to the front, I heard him tell James Vale he was under arrest.

Q. You say James Vale was arrested before Officer Laumann pulled out the items and asked who they belonged to?

A. No, sir, I said Officer Laumann removed the three capsules from the coat and he turned and held them up and showed them to me and he turned to James Vale and advised him he was also under arrest.

Q. That was before he asked who they belonged to?

A. I'd say yes. I can't be positive. I'm sure he placed James Vale under arrest and I walked to the front and brought Donald Vale in the room and at this time he asked who they belonged to.

Q. When Donald Vale said they belonged to him, did Officer Laumann change his order of arrest?

A. No, sir, he didn't.

STATEMENT BY MR. McNEIL: I have no further questions.

[fol. 257] BY MR. DRAKE:

Q. Officer Brady, after you had apprehended Donald Vale on the basis of these arrest warrants, why did you proceed further?

A. Well, we had staked out the address and taken it under surveillance for the purpose of finding out whether he was at the residence and at this time when we seen what we thought was a transaction we immediately went up to where they were at and we had reason to believe there were narcotics in the house and that's why we went in.

Q. Did you see anything passing hands? Did you see an actual transaction?

A. I didn't see nothing passing hands, but as we approached the automobile, I did see Saucier going to his mouth and place something into his mouth. I couldn't see what it was. At this time I immediately got out the car and walked to the car and ordered him out the car and placed him under arrest.

Q. Did you extract anything from his mouth?

A. No, sir, I didn't.

Q. This search you made, on what authority did you make this search?

[fol. 258] A. We felt we had probable cause to conduct a search and we advised them of this. We told them that.

Q. Based on what? The arrest warrants or . . .

A. On what we had seen.

Q. Based on the assumption that there was a transaction?

A. Yes, sir.

Q. Is it a general practice to have a house on stake-out without a search warrant?

A. We do it quite frequently, yes, sir.

STATEMENT BY MR. DRAKE: No further questions.

BY MR. McNEIL:

Q. One further question, you said, I think, that Mrs. Vale and James Vale were not there when you went in the house with Donald Vale, is that right?

A. Yes.

Q. How long were you in the house before they came in?

A. I'd say no more than three or four minutes.

Q. While you were there, that was before you started the search?

A. Yes, sir. Officer Laumann had walked to the rear of the house to determine whether anyone else was in the house.

[fol. 259] Q. Other than determining whether anybody else was in the house, no further search was made before Mrs. Vale and James came in, is that right?

A. We were just getting ready to start the search. I don't believe. No, sir.

Q. When James Vale came in, did he have anything with him?

A. Yes, sir, I believe I stated he had a bag of groceries.

Q. Did you search James Vale?

A. Not at that time.

Q. Did you search the grocery bag?

A. No, sir, I did not.

Q. You say it was only about three or four minutes after you had gotten inside?

A. I'd say approximately three or four minutes.

STATEMENT BY MR. McNEIL: No further questions.

RE-DIRECT EXAMINATION

BY MR. HULL:

Q. You testified that as a general rule you don't take fingerprints in these type cases. Would you state why?

[fol. 260] A. Well, the reason why when we conduct a surveillance, we usually have reason to believe who the ownership of what we're going after, who the owner is, and when we go into a residence or place we feel suire who the owners are and they won't let anybody else handle any of their narcotics or whatever they have.

Q. You testified that you saw Saucier at the time you moved in for the arrest put something in his mouth. Did he actually swallow this?

A. I seen him place it in his mouth and by the time I got to him he made a chewing motion and swallowed.

STATEMENT BY MR. HULL: No further questions.

RE-CROSS EXAMINATION

BY MR. McNEIL:

Q. You say you go on the supposition when you go in a place you don't have to make fingerprints or anything because you feel the people who live there are the owners . . .

A. Inside the residence, the people that are living there and the people we know who are inside the house, we, by the time we have sufficient information to get a search warrant, we know who's in the house and who's living there.

[fol. 261] Q. You don't bother to see whether it belongs to anybody else?

A. On a few occasions we have taken fingerprints to determine whose prints are on packages.

Q. Where you have a doubtful ownership or some doubt about whether a person is an owner, do you make any effort to determine whom the article belongs to by fingerprints or other evidence?

A. Yes, I do.

Q. And in this particular case, Donald Vale identified it as belonging to him, is that right?

A. Yes, sir.

Q. All of these items marked here?

A. Yes, sir.

Q. Were you satisfied with that identification?

A. My personal opinion, no, sir.

Q. But you didn't make any further effort to determine whether Donald Vale was, in fact, the owner as he told you?

BY MR. VOLZ: When he asks questions about ownership, this is a question of unlawful possession. Possession and ownership. This is a question of fact and law, and I don't think the officer, although he's a very qualified officer, is qualified, I don't think he's qualified to render a judicial opinion as to what constitutes illegal possession.

[fol. 262] BY THE COURT: I'll sustain the objection. Until you make it, I can't rule. I'll sustain that objection.

BY MR. McNEIL: To which we take and reserve a bill of exceptions.

BY THE COURT: You may have your bill. Proceed.

BY MR. McNEIL:

Q. Donald Vale told you all of these items, S-2 through S-7 were his?

A. Yes, sir.

Q. And they were found in a locker which he said was his, is that right?

A. Yes, sir.

STATEMENT BY MR. McNEIL: No further questions.

FREDERICK A. SOULE, called as a witness on behalf of the State, after being first duly sworn by the Clerk, testified as follows:

BY MR. McNEIL: Anticipating, from the District Attorney's opening statement, what Mr. Soule's testimony will possibly be, I'd like to ask that the jury be excused [fol. 263] to make an objection out of the presence of the jury.

BY THE COURT: Have the jury taken out.

BY MR. McNEIL: From the opening statement, I got the impression that Mr. Soule will be called on to testify concerning track marks found on the person of

the defendant, James Vale. If that is, in fact, true, I would like to object, first, on the ground that this is a separate and distinct offense. It has no connection whatever. Two, if there was any question of admissibility of prior offenses, or other offenses, that could be done, of course, where intent would be an element of the offense. But here there's no intent. The only purpose would be to be highly prejudicial as far as the defendant is concerned. In addition to the irrelevancy, I'd like to object and I wanted to argue this outside the presence of the jury.

BY MR. VOLZ: The question, rather the intent—There certainly is intent required in possession of narcotics. The Supreme Court has ruled that the State may, in cases of this type, introduce evidence tending to show the use of narcotics by the defendants. For the purpose of showing system and intent.

[fol. 264] BY MR. McNEIL: As I read the law, I see no intent whatever required.

BY MR. VOLZ: The purpose of this is to show we have narcotics found, not on the person of either defendant.

**(COLLOQUY BETWEEN COURT AND COUNSEL
FOR STATE AND DEFENSE)**

BY THE COURT: I'll have to overrule your objection and you may take your objection as he puts the questions because I think you anticipated what this witness will say. We'll have to make you objection and then we'll rule on it at the time. Bring the jury in.

(JURY RETURNED TO COURTROOM)

DIRECT EXAMINATION

BY MR. VOLZ:

- Q. State your name.
- A. Frederick A. Soule, Jr.
- Q. What's your occupation?

A. Policeman, New Orleans Police Department, assigned to the Narcotics Division.

Q. How long have you been so assigned?

A. Approximately seven and one-half years, almost eight years. Seven years and eight months.

[fol. 265] Q. I direct your attention to the day of April 24, 1967, and ask you if you had occasion to be present with Officers Brady and Laumann at 1826 Arts Street?

A. Yes, sir, I did.

Q. Did you go there with them?

A. Yes, sir, I did.

Q. And how many automobiles did you have?

A. We went in my automobile.

Q. You were all in one automobile?

A/ Yes, sir.

Q. Did you observe any activity outside of 1826 Arts Street?

A. Yes, sir.

Q. Would you tell us exactly what that activity was?

A. Yes, sir. About 12:00 Noon, Officers Brady, Laumann and myself had been there since about 11:45 and just before noon we had gone to the vicinity and about 12:00 noon we observed a 1958 green Chevrolet pull up in front of 1826 and toot the horn and the automobile come down a few more car lengths and backed into a parking spot and again tooted the horn. We recognized [fol. 266] the driver as Arizzio Andrew Saucier. After a few seconds the defendant, Donald Vale, came out of the house, 1826, and went up to the side of the automobile and leaned into the automobile and after a few seconds came back out of the automobile and walked into his house. A few minutes later he again returned back out of his house to the side of the automobile and leaned into the automobile.

Q. When he walked out of the house the second time, did he keep his head straight?

A. No, sir. He was looking up and down the neighborhood, what we call spooking.

Q. Would you show us what he was doing, please.

A. Looking back and forth like to see who might be coming or who was in the neighborhood.

Q. And then he proceeded to the car?

A. Yes, sir.

Q. What did you do then?

A. Officers Brady, Laumann and myself entered the police car and drove to the location in front of the green '58 Chevrolet. At the time we approached, we observed Arizzio Saucier, Fuzzy Saucier, as I know him, place something in his mouth with his right hand and attempt [fol. 267] to move the automobile. Officer Laumann blocked him in with the police vehicle directly in front of him as there was another car behind him and as we neared the automobile the defendant here, Donald Vale, who had been leaning against the automobile, looked at us and turned in the opposite direction. Officer Laumann and myself alighted from the police car and went in the direction of Vale and called to him to halt. The subject did so and we went up to him and arrested him and Officer Brady had gone to Saucier. We had two capias, arrest warrants, for the defendant, Donald Vale.

Q. Now, Officer Soule, I show you what the State has marked and introduced in evidence S-1, 2, 3 and 4, 6 and 7, and ask if you have ever seen these items before?

A. Yes, sir. All of these items were found in the address 1826 Arts Street by Officer Laumann and Brady and shown to me there and I can identify all of them by my initials on the labels, "F.A.S." and the date 4-24-67. Again, "F.A.S." on this one and the date. This is the [fol. 268] cellophane with the three capsules. This one, again my initials. The spoon, again with my initials "F.A.S." and the date and this outfit, piece of paper with my initials "F.A.S." and the date.

STATEMENT BY MR. VOLZ: Your Honor, at this time the State will attempt to qualify Detective Soule as an expert in the illicit administration of narcotic drugs and track marks.

BY THE COURT: Proceed. Subject, of course, to cross-examination on the predicate by counsel for defense.

BY MR. VOLZ:

Q. How long have you been a member of the Narcotics Division?

A. Approximately seven and one-half years. Seven years and eight months, something like that.

Q. Have you ever had any instructions . . . First, let's talk about formal instructions, as to the illicit administration of narcotic drugs and the effects on the body?

A. Lt. Giarrusso at the Police Academy gave lectures on narcotics at the Academy.

Q. After you were assigned to the Narcotics Division, did you have any similar instructions, either formal or informal?

[fol. 269] A. Yes, sir. I've spoke with several drug addicts who've gone through the procedure and shown me the methods in which they inject narcotics.

Q. Have you received any instruction, formal or informal, from Lt. Giarrusso, who is the commanding officer, I understand?

A. Yes. When I first came on the Squad he more or less gave me the same type lectures over again, going through it, showing procedures.

Q. Have you ever actually seen anyone inject narcotics in their veins?

A. On stakeout I've seen on two occasions people inject narcotics, yes, sir.

Q. Have you had the occasion to examine the place where they had injected the narcotics?

A. You mean on their body?

Q. Yes.

A. Yes, sir.

Q. On how many occasions have you had to examine the arms of persons you believe to be addicts?

A. I've done this almost on a daily basis while cruising in the street, in the field, and stopping persons and [fol. 270] speaking with them and checking their arms and other parts of the body where they could inject narcotics. Maybe sometimes ten times a day. Other days it could be none, but it's almost a daily basis.

BY THE COURT: For how long?

BY THE WITNESS: For the past six or six and a half years. Other than the three months I spent in the Academy and the year I worked undercover.

BY MR. VOLZ: May I proceed.

BY THE COURT: Yes, sir. Go right ahead.

BY MR. VOLZ:

Q. Would you say you've checked thousands?

A. Of these? Yes, sir.

Q. Have you ever been qualified as an expert in the illicit use of narcotic drugs and track marks in any Court?

A. Yes, in three sections of this Court here.

Q. What sections?

A. In this section here. In Section "B", Judge Braniff, and in Section, Judge Bagert's section. I don't remember the section number.

STATEMENT BY MR. VOLZ: Tender on qualifications only.

[fol. 271] BY MR. McNEIL:

Q. Mr. Soule, I understand you to say you've seen on two occasions somebody administer narcotics yourself?

A. Actual drug addicts administering, yes, sir.

Q. Did you observe what the after effects were of the administrations?

A. Yes, I could see them after they injected it.

Q. You saw them after they injected?

A. Yes, sir.

Q. Did you follow up and see them later on, maybe a week later or a month later?

A. I've seen them weeks later or a month later. Months later. Yes, sir.

Q. These two particular individuals I'm talking about.

A. Yes, sir. These two particular individuals.

Q. Where was the injection on these particular occasions?

A. Both of them were in the arms.

Q. Upper arm or lower arm?

A. In the crook.

Q. In the elbow?

A. Yes, sir, in the inner part of the elbow.

Q. Except for those two occasions the rest are scars you've seen and on the basis of information given you, you've been informed that these were narcotic injections, is that right?

[fol. 272] A. This, along, like I said, with drug addicts sitting down and showing me the places and procedures. The scar marks from the injections, yes, sir.

Q. A drug addict sits down and tells you people stick themselves in various places in the body?

A. They showed me where they injected it.

Q. These thousands of things, what were those? Were those marks of some kind?

A. Yes, sir, what we call trackmarks.

Q. When you refer to trackmarks, what is a trackmark?

A. A trackmark is the continual use of a certain vein where a scab forms. In other words, an area maybe an inch long. An addict may inject 8, 10, 12 times and the scab creates a scar on the vein like that and this is considered a trackmark.

Q. That's from the use of a hypodermic needle, you say?

A. The continual use of a hypodermic needle in a certain area.

Q. Is there any way of distinguishing a hypodermic needle used for administering drugs or for insulin in the case of someone suffering from diabetes?

A. Yes, there is. A drug is usually in along the vein. A diabetic does not shoot in a vein.

[fol. 273] Q. On what do you base that statement?

A. I've had opportunities to check diabetics also and, as a rule, they're on the muscle in the buttocks or hip and the drug addict is more in the veins of the arms, the legs, his groin, the fingers, the lack of the hand, along the veins.

Q. Isn't it true that lots of people with diabetes inject themselves with insulin?

A. Well, again, this is a diabetic. But I do understand they do. Yes, sir.

Q. And what would distinguish a hypodermic injection that was given, let's say legally, from one given illegally?

A. For diabetics?

Q. For the administration of morphine or opium?

A. You mean administered in a hospital?

Q. Yes.

A. It would be in the hip or muscle, not in the vein, and it wouldn't be a continual small spot.

Q. Are there any other kinds of injections given in the vein?

A. I don't know. I understand blood is taken from veins and when a woman has a baby, she's injected with demarol in the vein. However, if she takes more than one shot, it's not confined in one small area.

[fol. 274] Q. But there are other and numerous, possibly, instances where hypodermics are used, other than in the administration of drugs?

A. I know of none other injected in the veins, sir. Muscular, yes, sir.

Q. The fact that you know of no other, does that eliminate the possibility that there are other types of administration by hypodermic needles that is not confined to the illicit administration of drugs? The use of needles, taking blood out or giving blood transfusions, for instance?

A. Yes, sir. This is done with a larger type needle and there's a difference in the type of mark and this is more distinguishable from that used by that of a drug addict with 25 or 26 gauge needles. It's quite a different size trackmark and this too wouldn't be confined all in a small area.

Q. You're suggesting that only the illicit use of drugs by hypodermic is confined to a small area?

A. That's my opinion, yes, sir.

Q. That's only your opinion?

A. I know of no other drug or any other procedure where this is done.

[fol. 275] Q. Mr. Soule, have you gone to medical school? Have you had any medical education?

A. No, sir, I haven't.

Q. Just what you're speaking of here is just what you've observed from the administration of hypodermics in drug addicts and the marks it leaves?

A. And in addition to speaking to drug addicts at Charity Hospital.

Q. That would be, of course, hearsay in what they told you and . . .

Q. This would be hearsay knowledge I've gained from them.

Q. And is there any way you can determine the age of a scar?

A. Yes, sir. You can't narrow it down to a certain minute or hour, but you can determine the age of it by, for example, like one bleeding would have been in a short amount of time. One with a scab would be as much as up to 2 to three weeks, depending on the person's ability to heal. Those without scabs would be a longer period.

Q. How long would a scar desist?

A. Depending on the person, Scars last different times. Some take longer to heal than others and the scar would be there a longer length of time. From one day to three weeks.

[fol. 276] Q. Does the scar disappear in time?

A. If it's a heavy enough scar, no, sir. It doesn't disappear like a burn or cut. It won't disappear.

Q. And those scars that do not disappear, is there any way of determining the age of those?

A. Not actually, other than like I said without a scab would be more than likely from three weeks or a greater length of time, other than that with blood on the outside or scab. I couldn't narrow it down to one year or ten years.

Q. Would you say a mark without a scar would have to be more than three weeks or four weeks?

A. Without a scab?

Q. Yes.

A. Yes, sir. A mark that doesn't have a scab would be of that length depending, of course, on the person's ability to heal.

Q. And you say that the drug addict uses the needle in the crook of the arm and that's where the scar is found?

A. I said on the back of the hands, the arms, on the armpits, the groins, the legs, the ankles, the neck, the veins in the neck. Anywhere they can catch a vein.

[fol. 277] Q. Would you say a drug addict uses all of these places alternately or would you say or would you find it in one spot?

A. Some do what they call "Skipping". One time in this crook, next time behind the hand, next time in the ankle, depending. A majority of them go, for some reason, for the arms. The back of the forearm or the inside or the crook or back up here. This seems to be more so rather than the rest. The rest are used also, however.

Q. Where you find the constant user, wouldn't you find marks in more than one place?

A. It depends on the drug addict. If he wants to skip around, yes, sir. A heavier drug addict would be likely to have it in more than one place. A person not so addicted might just have a small trackmark on one arm. Others might have it in both arms. I've seen on some occasions they have it in the crook of both arms and in the legs too.

Q. From your experience, most of it is in the crook of the arm, is that right?

A. I didn't say that. I said on the arm. In the crook, the outer forearm, up high, down the back of the hands, but on the extremity of the arm, as the rule.

STATEMENT BY MR. McNEIL: No further questions.

[fol. 278] **STATEMENT BY MR. DRAKE:** No questions.

STATEMENT BY THE COURT: I'll hold the witness is qualified to testify as an expert and, as such, will be allowed to express his opinion as to the use of narcotics. The effects of narcotics on the human being.

BY MR. McNEIL: To which ruling of the Court I respectfully reserve a bill of exceptions.

BY THE COURT: You may have your bill. Proceed.

BY MR. VOLZ:

Q. Officer, would you please, for the benefit of the jury, tell us and show us how the narcotics are injected and you may use anything you see before you here. Let me show you first of all, Exhibit S-2, being a spoon.

A. This is commonly known as a cooker. You see it's burnt on the bottom and is slightly bent. It's bent to [fol. 279] hold the spoon level rather than if it were upward like this. Along with that would be required a tourniquet, a complete outfit consisting of an eye-dropper with a bulb, sometimes a regular black bulb as this one or a baby's pacifier. One of the yellow bulbs. It's taken off of the pacifier and placed on back of the eyedropper.

Q. Would you remove this, please, Officer?

A. Yes, sir. This is some of the equipment required. Tourniquet, cooker or spoon like this, hypodermic needle, usually 25 or 26 gauge. This is just a piece of wrapping paper. Of course, the drug which you'll use. Water is required. This is a glass eyedropper, the usual eyedropper as one would buy in the store. This one has a black rubber bulb attached. In many cases a pacifier is used. It's a larger bulb and an addict with a big habit would draw more solution for a larger injection. Also, a paper boot is required and in this case it seems to be stuck in here. I can't remove it, but this is a boot inside. The glass eyedropper requires a boot because a metal needle will not remain on the glass. It'll slide right off. A piece of paper wrapped around the edge of the eyedropper will [fol. 280] allow the needle to remain on in this position and will not fall off. A boot forms a solid seal. A boot is usually made of a dollar bill. U. S. Currency. Because it has a tendency to get wet and doesn't fall apart and is very strong paper. With water, the drug addict takes and empties out, for this example, caps of heroin and places the heroin in the cooker.

Q. How many do they usually use?

A. It depends on the drug addict. Some may use a half a cap. Others may use ten to eleven caps at one time in a cooker. The water, as I said, is drawn up and measured in a specified amount into the eyedropper. The

addict knows how much he can use and draws that certain amount. This is placed in the spoon like I said in the cooker and this is placed in with the powder and a match is used or a cigarette lighter, and is passed under it. This helps speed up the dissolving of the powder and also the small amount of heat, if it's a large amount of powder, it wouldn't normally dissolve in the small amount of water, so we have what we call super saturated solution. It'll dissolve more readily in that amount of water. [fol. 281] Cotton is placed in it to act as a filter. The needle, called the point, is placed into the cotton and squeezed and drawn up and at this point the piece of cotton will act like a filter and will keep out any particles of dust that may have settled down and did not dissolve. You then have the liquid in the eyedropper ready for injection. A tourniquet is applied to the upper arm, higher up. If it's in the leg, the tourniquet would be on the leg. When the tourniquet is applied, the veins will puff up to a greater extent where the tourniquet is applied and the veins puff up and makes it easier to catch. See how when I let it go, how the veins go back down. When the tourniquet is here and the veins are puffed up, the drug addict will hold this type of outfit and come down like this and work with it until it gets into a vein. This type of outfit is usually preferred over a regular hypodermic syringe because a regular hypodermic syringes, when applying pressure to inject the solution that's in it, a sudden motion will drive the needle out of the vein. This type of operation, once you catch the vein, it's a simple matter of squeezing the bulb and [fol. 282] they can maintain it in the vein. When the vein is caught, a slight pressure is strong enough to drive a small amount of blood into the solution of the outfit. This is called registering. When the drug addict sees a small amount of red come into the solution, he knows he's in the vein. If it goes through the vein, of course, there would be no pressure and no blood would come into the outfit. Once they register, the tourniquet is released and a simple squeezing of the bulb is all it takes and this is the injection.

Q. Would you look at that spoon that you were using, would you turn it over and look at the back of it? Is there anything on the back of that spoon?

A. Yes, sir. It's burnt. You can see the blackness where it's burnt and the rest is cleaned off. This is usually cleaned off from constant use, over and over again. It causes this type of situation. You can see where it's burnt in the center and the rest being cleaned out. You can see some of the chrome is started to be scraping away from the inside of the spoon. This shows constant use. It has been used several times. More than just once or so.

[fol. 283] Q. In your experience and in your expert opinion, would it be common or uncommon for one or more addicts to use the same, as you call it, outfit, to inject?

A. It's common that more than one addict uses the same outfit. There's no code amongst themselves that says one addict has to use one outfit and another addict has to use another. When you get a group of three to five addicts together, and they have a number of capsules, each one is going to inject, and they only have one outfit, they all use the same outfit. There's no reason for one to use one outfit and the other to go and to get another one.

Q. In your capacity as an expert and in your experience, what's the going rate—going price per capsule?

A. The going price for a capsule being sold single like that is \$5.00 a capsule. A person buying five or six capsules would spend \$25.00 or \$30.00 to get his capsules.

Q. You told us, you mentioned before, about the marks that are left, caused through the injection, constant injection of constant use of the hypodermic needle, is that correct?

A. Yes, sir

[fol. 284] Q. Did you have occasion on the 24th of April, 1967, to examine the arms of Donald Vale?

A. Yes, sir, I did.

Q. And did you examine his arms for trackmarks?

A. Yes, sir, I did.

Q. What did you find?

A. I found numerous trackmarks on both arms, in the crooks of both arms and on the inner forearm and outer forearm of both arms.

Q. Did these marks have scabs on them or not?

A. Numerous scabs and, of course, others were older.

Q. The ones with the scabs, how old would you say they were?

A. As I said before, I couldn't definitely say it was any certain length of time. I could say it was any length of time where it could form a scab, maybe a day or a shorter period of time to three weeks. Depending on the person's ability to heal.

Q. Did you have occasion to examine the arms of Pat Vale?

A. Yes, sir, I did.

Q. What did you find?

A. I found trackmarks on the back of the right hand between the ring finger and the small finger, about a half inch long and I'm not quite sure whether it was [fol. 285] under the right or left arm, I found a string of trackmarks, three to four inches long.

Q. Show the jury the spot you're talking about.

A. There's a heavy vein from the armpit to the elbow and in about the middle, I'm not sure whether it was right or left, there's a string of three to four inches long of heavy trackmarks with numerous scabs. Also, there was about five scabs on the trackmarks on the back of his right hand.

STATEMENT BY MR. VOLZ: No further questions.

STATEMENT BY MR. DRAKE: I have no questions.

CROSS-EXAMINATION

BY MR. McNEIL:

Q. Did you make a report of this at the time in the police report that's usually made following the arrest?

A. We made a police report, yes, sir.

Q. In that police report, did you say you had found trackmarks on the arm of James Vale?

[fol. 286] A. No, sir, I didn't put down I found trackmarks on James Vale.

Q. Why didn't you put that down?

A. I didn't think about it at the time.

Q. Was it an afterthought?

A. Pardon?

Q. Was it an afterthought?

A. I recall it now that I read my report but at the time I made my report I didn't remember to put it in.

Q. You're testifying now from a recollection, where you didn't see fit to put it in immediately after the incident?

A. I'm testifying now from refreshing my memory, reading the report. But, as you said, not seeing fit, that's not the case.

Q. Did you or did you not put it in the report?

A. It was not placed in the police report.

Q. What was placed in the police report in respect to trackmarks on the defendant, James Vale?

A. There are references to trackmarks to that of the back of his hand. The right hand. With the remark about five scabs on it.

[fol. 287] Q. It had five scabs on it?

A. Yes, sir.

Q. Do you have that report?

A. Not on me, no, sir.

Q. Do you have it available?

A. Not on me, no, sir.

Q. But do you have one available?

BY MR. VOLZ: I think the proper procedure is if the officer feels he needs the report to refresh his memory, he can call for it, but the defense counsel can't insist I produce it.

BY THE COURT: I don't agree with you on that. If he wants --- I'm going to order you to give the police report to counsel and let him read it and then you can proceed with it.

BY MR. VOLZ: I might point out to the Court. . .

BY THE COURT: I've ruled, counsel. I don't want to hear from you. Produce the report.

BY MR. VOLZ: We ask now that the witness be allowed to have a copy of the report.

BY THE COURT: I'll allow him to see it.

BY MR. VOLZ: The State would like to reserve a bill of exception, Your Honor.

BY THE COURT: You may do that.

[fol. 288] BY MR. VOLZ: Object to the Court's ruling and reserve a bill of exceptions, making the questions, the answers, propounded by the witness, and the Court's ruling ordering the State to produce the police report part of the bill of exceptions.

BY THE COURT: And also put in the bill that the witness had testified as to his police report.

BY MR. McNEIL:

Q. I ask you to look at this police report and at the part of the report it mentions trackmarks with reference to James Vale, I ask you to read that to the jury.

BY THE COURT: Let him read it and then ask questions. If it's for impeachment, you have the right to do it, but you don't have the right to have him read the report. You can't ask him to do that. I won't permit that. He can read it to himself. You can read it and you can ask questions.

BY MR. McNEIL:

Q. Officer, I call your attention to your report again and ask if it's not true that in the report made following the arrest which was testified to; that the report says Officer Laumann checked James Vale's arms and found trackmarks on his right hand between the little finger and the ring finger? Is that in the report?

[fol. 289] A. It is in the report, sir.

Q. So, Mr. Laumann made the inspection and not you, is that correct?

A. That's not so, sir.

Q. You're saying then this report is not correct?

A. I'm saying it is correct, sir.

Q. It is correct?

A. Yes. Both Laumann and myself. As a matter of fact, I checked all three subjects' arms. Andrew Saucier also.

Q. I'll ask you, does this report contain any reference that you made to an inspection of James Vale?

A. This report does not state the words that I also checked James Vale's arms. However, I did.

Q. Does it state in anything other than words that you made such an inspection?

A. Pardon?

Q. You said it does not state in words that you made the inspection. Does it state in any other form other than words that you made the inspection?

[fol. 290] BY MR. VOLZ: I object, Your Honor. That's a ridiculous question.

BY THE COURT: Sustained.

BY MR. McNEIL:

Q. You say that the report does not state that you made an inspection of James Vale's arms.

A. That's true. It does not state in that report that I also checked James Vale's arms.

Q. So that you're telling us now that you did make an inspection, but you didn't put it in the report, is that correct?

A. That's true, sir.

Q. And did Officer Laumann make a check of James Vale's arms?

A. Yes, sir, according to the report he did.

Q. Officer Laumann, according to the report, only found a mark which he thought...

BY THE COURT: You're not permitted to do that and I'm not going to let you do it. There's only one reason or purpose you can go into that for and you know the purpose. That's why I let you have it. For any other purpose, you're not entitled to have it. Proceed.

[fol. 291] BY MR. McNEIL:

Q. Well, is there any reason, Officer, that no report was made...

A. The report was made. You have it.

Q. Of any trackmarks found by you?

A. The only thing I could think of is at the time that particular part was typed I may have stepped out the office. However, there are other thinks also not mentioned in the report that did happen that day. However, I used this report to refresh my memory and from my memory I checked James Vale's arms and Andrew Saucier's arms.

Q. You're saying you used this report to refresh your memory?

A. Yes, sir.

Q. And that's the basis on which you testified to finding the marks on the arms?

A. After reading the report and refreshing my memory, this is what I used to testify in this Court. Yes, sir.

STATEMENT BY MR. McNEIL: No further questions.

[fol. 292] CLINTON LAUMANN, having previously testified for the State and being previously sworn by the Clerk, was recalled as a witness on behalf of the State and testified further as follows:

DIRECT EXAMINATION

BY MR. McNEIL:

If Your Honor, please, I'd like to offer the police report in evidence.

BY THE COURT: What's the purpose?

BY MR. McNEIL:

To show that the report shows that no inspection was made by the officer as he testified. That the inspection was made by Officer Laumann.

BY THE COURT: I can't let it in for that purpose. If it's to introduce the report to impeach the witness, it's admissible for that purpose and that purpose alone. If it will not impeach his testimony, it's not admissible. I'll deny it for the reasons you've stated.

BY MR. McNEIL:

To which we respectfully reserve a bill of exceptions.
BY THE COURT: You may have your bill. Proceed.

[293] BY MR. VOLZ:

Q. Officer Lautmann, you're still under oath. Just one question ... Two questions. Did you examine the arms of Donald Vale?

A. I looked at them. Yes, sir.

Q. Did you examine the arms of Pat Vale?

A. I examined the arms of Pat Vale.

Q. Did Officer Soule examine the arms of Pat Vale?

A. Yes, sir.

Q. Did Officer Soule examine the arms of Donald Vale?

A. Yes, sir.

STATEMENT BY MR. VOLZ: Your witness.

CROSS-EXAMINATION

BY MR. McNEIL:

Q. Was that included in your report, Officer Lautmann?

A. It was.

Q. That Officer Soule made the inspection?

A. Yes, sir.

Q. That was included in the report?

A. Yes, sir, it was.

[fol. 294] Q. You're sure about that?

A. Positive.

Q. I show you what purports to be the report made by the police department and ask if you can find in there a report of the inspection made by Officer Soule of Pat Vale?

A. Of who?

Q. James Vale. You said there was an inspection made by Officer Soule.

A. Right.

Q. And I said will you point out in the report where reference is made to an inspection made by Officer Soule of James Vale?

A. The report says I checked the arms of Pat Vale. This is in the report. But I also know that Soule. . .

Q. Wait a minute. . .

BY MR. VOLZ: Your Honor, he can qualify his answer,

BY THE COURT: I'd let him complete his answer. He can explain it. Read it back, Miss Noonan.

BY THE COURT REPORTER: "And I said will you point out in the report where reference is made to inspection made by Officer Soule of James Vale?"

[fol. 295] BY THE COURT: Can you point it out?

BY THE WITNESS: The report says I checked James Patrick Vale.

BY MR. McNEIL:

Q. That isn't what I asked you. Does the report contain any reference to an inspection made by Officer Soule of the arms of James Vale?

A. No, I don't think so.

STATEMENT BY MR. McNEIL: No further questions.

RE-DIRECT EXAMINATION

BY MR. VOLZ:

Q. Do you know why it doesn't?

BY MR. McNEIL: I object to that, if Your Honor please.

BY THE COURT: I'll overrule the objection. Let him answer.

BY MR. VOLZ:

Q. Why isn't it in the report?

A. When we make the reports, we sit down and get our heads together and try to make them accurate down the line. We just left it out. That's it. We do get to-

[fol. 296] gether and make the report. We try to get it all in. We just left it out.

Q. Did Officer Soule check the arms of Pat Vale and Donald Vale?

A. Yes, sir.

Q. And Arizzio Saucier?

A. He did.

Q. And did you?

A. I saw Donald Vale's arms. They were quite obvious. There were tracks from one end to the other and I checked James Patrick Vale's arms and hands.

STATEMENT BY MR. VOLZ: That's all.

RE-CROSS EXAMINATION

BY MR. McNEIL:

Q. What did you find on James Vale? You say you made the inspection.

A. On his right hand between the little, on the back of the right hand, between the little finger and the ring finger, he had a trackmark I think about a half a inch long with five scabs running along it.

[fol. 297] Q. Did you find any other marks anywhere?

A. I did not, no, sir.

Q. Did you look anywhere else?

A. Yes, sir.

Q. Did you look at his arms?

A. I did.

Q. And you found no marks on his arms?

A. No, sir, I didn't.

Q. Officer, isn't the real reason why nothing was said about this in the report is you've been trying to make out a case against James Vale since the report was made. Isn't that the real reason it was left out?

A. I just told you why it was left out. The real reason it was left out. I said we sit down and make the reports and we try to get it down as it happened. That's the real reason. Just like I told you before.

STATEMENT BY MR. McNEIL: No further questions.

STATEMENT BY MR. HULL: The State rests, Your Honor.

[fol. 298] BY MR. McNEIL: We'd call Mr. Wolfe.

ADOLPH M. WOLFE, called as a witness on behalf of the defendant, James P. Vale, after being first duly sworn by the Clerk, testified as follows:

DIRECT EXAMINATION

BY MR. McNEIL:

Q. State your name, please, sir.
A. Adolph M. Wolfe.
Q. And what firm are you connected with, sir?
A. Wimberly, Incorporated.
Q. Do you know the defendant, James Vale?
A. Yes.
Q. On or before April 24th of this year, was James Vale in the employ of Wimberly?

A. Yes.
Q. How long had he been in the employ of Wimberly?
A. I think he started in December of '65.
Q. And what was his salary?
A. He . . .

[fol. 299] BY MR. VOLZ: I object to what his salary was, Your Honor. I don't know what relevancy that has.

BY THE COURT: Sustained.

BY MR. McNEIL:

Q. On the 24th, do you know whether or not on that date the defendant, James Vale, went on his vacation?
A. Yes, he did.

Q. Was he on vacation on the 24th of April? That would be a Monday.

A. Yes, sir.

STATEMENT BY MR. McNEIL: No further questions.

STATEMENT BY MR. VOLZ: No questions.

STATEMENT BY MR. McNEIL: On behalf of James Vale, we rest.

STATEMENT BY MR. DRAKE: Call Mr. John Shea, please,

[fol. 300] JOHN A. SHEA, called as a witness on behalf of the defendant, Donald Vale, after being first duly sworn by the Clerk, testified as follows:

DIRECT EXAMINATION

BY MR. DRAKE:

Q. Mr. Shea, what's your occupation?

A. I'm an attorney, sir.

Q. Are you acquainted with the defendant, Donald Vale?

A. Yes, sir. I represented him at one time.

Q. Did you represent him on April 24, 1967?

A. Is that the date of the arrest in this particular case?

Q. Yes.

A. Yes, sir, I did.

Q. On the morning of the arrest, were you attempting to have a bond forfeiture . . . Were you attempting to have a bond reduction . . . Did you file a motion for a bond reduction?

A. Yes, sir. I filed a motion for bond reduction with Judge Haggerty and Judge Haggerty sustained this motion and did, in fact, reduce this bond.

Q. Did he recall two existing capias which were outstanding at this time?

[fol. 301] A. I filed the motion for bond reduction and when Judge Haggerty signed this, he additionally signed what they call a bail order, which is a blue slip which the bond clerk requires to satisfy the capias issued when the charge is taken or when there's a capias outstanding. I took both the motions and bail orders to the bond clerk and filed them with him in order to satisfy the existing bonds at that time.

Q. Is it automatic at the time these are filed with the bond clerk that the capias is recalled?

A. I don't know about it being automatic. I know it satisfies the capias. I don't know what procedure is followed by the bond clerk. Whether he has to do something in recalling the capias, I don't know, sir.

Q. To your knowledge, if a defendant who's out on an original bond and a capias is issued for him and this procedure of having a bond reduction was granted and you filed the bail order, subsequently filed it with the bond clerk, in the meantime, if the defendant is arrested by the police department, would this arrest be valid?

BY MR. VOLZ: I object, Your Honor.

[fol. 302] BY THE COURT: I'll sustain it.

BY MR. DRAKE:

Q. In your opinion, does the issuing of the bail order satisfy the capias? Recall the capias?

BY MR. VOLZ: Objection, Your Honor.

BY THE COURT: Sustained.

BY MR. DRAKE:

Q. Mr. Shea, did Donald Vale make any attempt to contact you on the morning of April 24th?

BY THE COURT: That you know of. Yourself. Not what somebody might have told you.

BY THE WITNESS: I don't recall. I really don't. The defendant contacted me, both at my home and my office and that particular morning I came straight to Court and I don't recall whether he contacted me. If he hadn't called me at home, he possibly tried to call the office. I don't know.

Q. But you did have this bail order signed by the Judge and subsequently filed with the Clerk, is that correct?

A. Yes.

STATEMENT BY MR. DRAKE: No further questions.

[fol. 303] BY THE COURT:

Q. You got a bail order from Judge Haggerty and that was a bail order for reduction of bond. Did you, in fact, make bond for that man that morning?

A. Did I myself make bond?

Q. Did anybody you know of make bond for him?

A. The bond was previously written when the defendant was arrested and he was bonded out of the Central Lockup or out of the Magistrate's Court. The reason for the bond . . . The necessity of the bail order and the motion and application for bail reduction was because there was a difference in the bond made to release the man from the Central Lockup and that recommended by the District Attorney's Office.

Q. Was the man in the Central Lockup, if you know, of your own knowledge?

A. At that time?

Q. On the 24th.

A. No, sir. He was enlarged on a bond previously made when he was previously arrested.

Q. How did the bond get to be raised?

A. The District Attorney, when they accept a charge, they recommend a bond, and it doesn't always correspond with the bond set by a Judge, or Committing Magistrate.

[fol. 304] Q. Do you know where the capiases were on the new bond that had been set on the 24th?

A. Where the capiases were, no, sir. I do not know.

BY THE COURT: You gentlemen have any further questions?

BY MR. DRAKE: No further questions, Your Honor.

BY MR. VOLZ: No questions.

STATEMENT BY MR. McNEIL: We rest on behalf of James Vale.

STATEMENT BY MR. DRAKE: We rest on behalf of Donald Vale.

[fol. 323]

[Reporter's Certificate (omitted in printing)]

IN THE SUPREME COURT OF LOUISIANA

No. 49-066

STATE OF LOUISIANA, APPELLEE

versus

DONALD J. VALE, JAMES P. VALE, APPELLANT

ORIGINAL BRIEF ON BEHALF OF APPELLANT,
DONALD J. VALE* * *
V. ASSIGNMENT OF ERRORS

1. The trial court erred in over-ruling the appellant's motion to suppress evidence.

IN THE SUPREME COURT OF LOUISIANA

No. 49,066

STATE OF LOUISIANA

v.

DONALD VALE AND JAMES VALE

APPEAL FROM SECTION "E" OF THE CRIMINAL
DISTRICT COURT PARISH OF ORLEANS, HON.
RUDOLPH F. BECKER, JR., JUDGE

OPINION—Tuesday, November 12, 1968

FOURNET, Chief Justice.

Appellants, Donald Vale and James Vale, having been jointly tried and convicted on a bill of information charging them with the wilful and unlawful possession and control of "a narcotic drug, to-wit: Heroin," in violation of R.S. 40:962,¹ were sentenced as multiple offenders under R.S. 15:529.1² to serve 15 years each at hard la-

¹ R.S. 40:962 provides: "A. It is unlawful for any person to manufacture, possess, have under his control, sell, give deliver, transport, prescribe, administer, dispense, or compound any narcotic drug, except as provided in this Sub-part, or to be or become an addict as defined in R.S. 40:961. * * *."

² R.S. 15:529.1 provides: "* * * D. If, at any time, either after conviction or sentence, it shall appear that a person convicted of a felony has previously been convicted of a felony under the laws of this state, or has been convicted under the laws of any other state or of the United States; or any foreign government or country of a crime, which, if committed in this state would be a felony, the district attorney of the parish in which subsequent conviction was had may file an information accusing the person of a previous conviction. Whereupon the court in which the subsequent conviction was had shall cause the person, * * * to be brought before it and shall inform him of the allegation contained in the information and of his right to be tried as to the truth thereof according to law and shall require the offender to say whether the allegations are true. If he denies the allegation * * * the judge shall fix a day to inquire whether the offender has been convicted of a prior felony * * *. If the judge finds he has been convicted of a prior felony * * * the court shall sentence him to the punishment prescribed in this Section * * *."

bor in the Louisiana State Penitentiary, and, for the reversal of their conviction and sentence they rely on several alleged errors committed during the course of their trial.

The first alleged error complained of forms the basis of Bill of Exception Number 1 reserved by James Vale when the trial judge overruled his motion to suppress certain evidence that is the foundation of this prosecution, i.e., 3 capsules of off-white powder, 171 capsules found in a contraceptive, 76 clear capsules found in a Bufferin bottle and 103 small white pills, and certain paraphernalia used to administer narcotics composed of a metal spoon, glass eyedropper, plastic needle holder, and two needles, procured as a result of a search of the premises occupied by the accused and his mother. The motion was predicated upon the contention that the objects were fruits of an illegal search and seizure, having been conducted without benefit of a search warrant and was not incidental to a valid arrest.

The fact that the objects sought to be suppressed were secured without the benefit of a search warrant does not necessarily constitute them as being illegally obtained and therefore inadmissible in evidence, as it is an unreasonable search and seizure that is prohibited by the Fourth Amendment to the United States Constitution³ and Article 1, Section 7 of this State's Constitution.⁴

Under the express provisions of the Code of Criminal Procedure adopted by the Legislature by Act No. 310 of 1966, "A peace officer may, without a warrant, arrest a person when: (1) The person to be arrested has com-

³ "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

⁴ "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated, and no such search or seizure shall be made except upon warrant thereof issued upon probable cause, supported by oath of affirmation, and particularly describing the place to be searched and the persons or things to be seized."

mitted an offense in his presence, * * * * and "(3) The peace officer has reasonable cause to believe that the person to be arrested has committed an offense although not in the presence of the officer,"* and " * * * take from the person arrested all weapons and incriminating articles which he may have about his person. * * * *"
 "Reasonable belief—or 'probable cause,' as it is termed under the federal standard—to make an arrest without a warrant exists when the facts and circumstances within the arresting officer's knowledge, and of which he had reasonable trustworthy information, are sufficient in themselves to justify a man of average caution in the belief that a felony has been or is being committed." State v. Johnson, 249 La. 950, 192 So.2d 135; See also, State v. Green 244 La. 80, 150 So. 2d 571, State v. Aias, 243 La. 945, 149 So. 2d 400; State v. CAlcscione, 243 La. 993, 149 So. 2d 417; Draper v. United States, 358 U.S. 307, 79 S.Ct 329, 3 L. Ed.2d 327.

As was very aptly observed by the United States Supreme Court in the case of United States v. Rabinowitz, 339 U.S. 56, 70 S.Ct 430, 94 L. Ed 653, "The right to search the place where the arrest is made in order to find and seize things connected with the crime as its fruits or as the means by which it was committed' seems to have stemmed not only from the acknowledged authority to search the person, but also from the long-standing practice of searching for other proof of guilt within the control of the accused found upon arrest. Weeks v. United States, 232 U.S. 383, 34 S.Ct 341, 58 L.Ed 653. It became accepted that the premises where the arrest was made, which premises were under the control of the person arrested and where the crime was being committed, were subject to search without a search warrant. Such a search was not 'unreasonable',⁸ citing Agnello v. United States, 269 U.S. 20, 46 S.Ct 4, 70 L.Ed 145; Carroll v. United States, 267 U.S. 132, 45 S.Ct 280, 69 L.Ed 543; Boyd v. United States, 116 U.S. 616, 6 S.Ct 524, 29 L. E. 746. (Emphasis added.)

* Code of Criminal Procedure, Article 213.

* Code of Criminal Procedure, Article 225.

The only evidence adduced at the hearing held on the accused's motion to suppress was that of officers of the Narcotics Division of the New Orleans Police Department involved in the arrest, search, and seizure, and none was offered in rebuttal. According to the record, about 11:45 A.M. on April 24, 1967 Officers, Brady, Laumann, and Soule were trying to locate the defendant, Donald Vale, for whose arrest they held two capias from the Criminal District Court for the Parish of Orleans, Division H, on two charges for violation of the narcotics act. Having information that Donald Vale was residing at 1826 Arts Street in the City of New Orleans, the three officers proceeded there in an unmarked car which they parked approximately one-half block from the residence and began a surveillance of the house from various positions as they did not want their presence known until they were sure that Vale was at the location so as not to alert him to allow him to avoid arrest. After approximately 15 minutes the officers observed a green 1958 Chevrolet drive up and sound the horn and after backing into a parking place, again blew the horn. At this juncture Donald Vale, who was well known to Officer Brady, having arrested him twice in the previous month, was seen coming out of the house and walk up to the passenger side of the Chevrolet where he had a close brief conversation with the driver; and after looking up and down the street returned inside of the house. Within a few minutes he reappeared on the porch, and again cautiously looked up and down the street before proceeding to the passenger side of the Chevrolet, leaning through the window. From this the officers were convinced a narcotics sale had taken place. They returned to their car and immediately drove toward Donald Vale, and as they reached within approximately three cars lengths from the accused, (Donald Vale) he looked up and, obviously recognizing the officers, turned around, walking quickly toward the house. At the same time the driver of the Chevrolet started to make his get away when the car was blocked by the police vehicle. The three officers promptly alighted from the car, whereupon Officers Soule and Laumann called to Donald Vale to stop as he reached the front steps of the house, telling

him he was under arrest.⁷ Officer Brady at the same time, seeing the driver of the Chevrolet, Arizzio Saucier, whom the officers knew to be a narcotic addict, place something hurriedly in his mouth, immediately placed him under arrest and joined his co-officers. Because of the transaction they had just observed they, informed Donald Vale they were going to search the house, and thereupon advised him of his constitutional rights. After they all entered the front room, Officer Laumann made a cursory inspection of the house to ascertain if anyone else was present and within about three minutes Mrs. Vale and James Vale, mother and brother of Donald Vale, returned home carrying groceries and were informed of the arrest and impending search. At this time Officer Laumann returned to the living room and requested James Vale accompany him into the bedroom while it was searched, and Mrs. Vale joined them. In a chifforobe in that room Officer Laumann found a wool coat which contained three capsules of off-white powder, at which time Donald Vale was called into the bedroom and in response to Officer Laumann's question as to whom these items belonged, Donald Vale volunteered that it was him. According to the testimony of Officer Brady, Mrs. Vale answered when asked who stayed in this bedroom, "Donald does not stay at this address. He does not stay here at all. Pat Vale (James) stays here and this is his bedroom." James was then immediately placed under arrest by Officer Laumann and was informed of his constitutional rights. Officer Laumann then proceeded with the search and found in a brown suit in the chifforobe 171 capsules of off-white powder in a contraceptive, 76 clear capsules with powder in a Bufferin bottle and 103 small white tablets in a yellow finger stall, all of which Donald Vale volunteered belonged to him and at this time Officer Brady asked him for his narcotics paraphernalia usually used in the trade and he answered, "You have all the rest of it, I might as well give you that too." He then lead Officer Brady to the bathroom linen closet where he found a spoon and a narcotics out-

⁷ Donald Vale was also informed that they held two capias for his arrest.

fit wrapped in briwn paper containing a glass eyedropper, plastic needle holder and two needles under the towels as pointed out by Donald Vale. Following this an examination of both of the defendants' arms revealed scars resulting from injections of narcotics known as "track marks." All the seized items were taken to the Narcotics Division Office and defendants were booked and jailed.

Unquestionably under the facts and circumstances of this case as above related, the arresting officers were justified in their belief that a felony was being committed by Donald Vale and Saucier, and the arrest of the two was lawful. We are also of the opinion the officers, being well trained in their profession and being knowledgeable of the methods and procedure of the trade, were justified in searching the house from which they had observed Donald Vale emerge under the circumstances above related in the belief that this was his place of operation and from which they would find the supply as fruits for which the arrest was made. The search of the house in the immediate vicinity of the arrest of Donald Vale and substantially contemporaneous therewith was reasonable under the Fourth Amendment, particularly, when narcotic drugs are involved, as in the case at bar, which are easy to remove, hide or destroy. *Ker v. California*, 374 U.S. 23, 83 S.Ct 1623, 10 L.Ed 2d 726; *State v. Calascione*, *supra*; *State v. Aias*, *supra*; compare, *Stoner v. California*, 376 U.S. 483, 84 S.Ct 889, 11 L.Ed 2d 856. It would be unreasonable to require the officers under the facts of the case to first secure a search warrant before searching the premises, as time is of the essence inasmuch as the officers never know whether there is anyone on the premises to be searched who could very easily destroy the evidence. *Harris v. United States*, 331 U.S. 152, 67 S.Ct 1098; *United States v. Francolino*, 367 F.2d 1013, cert. denied, 386 U.S. 960, 87 S.Ct 1020, 18 L.Ed 2d 110; *People v. Acosta*, 213 Cal. App.2d 706, 29 Cal. Rpt. 241.

Counsel for James Vale argues strenuously, both orally and in brief, that the trial judge improperly distinguished the case of *State v. James* 382 U.S. 36, 86 S.Ct 151, relied upon by defendant.

From our appreciation of the case, wherein the United States Supreme Court overruled a decision of this court, 246 La. 1033, 169 So. 2d 89, it is clearly distinguishable and inapposite from a factual as well as legal standpoint. In the James case the narcotics sale and arrest took place in an automobile more than two blocks from the house subsequently searched and the United States Supreme Court held that the search could not be regarded as an incident to the arrest and was therefore illegal, observing, "A search can be incident to an arrest only if it is substantially contemporaneous with the arrest and is confined to the immediate vicinity of the arrest."

Counsel's argument in behalf of James Vale that the trial judge had further committed error in overruling his motion to suppress in that the decision was also based on the ground that no one before the court had any standing to challenge the illegality of the search, is not supported by the record. True, the statement was made by the trial judge in overruling Donald Vale's motion to suppress, which was neither timely filed nor any reasonable ground given for the delay, but as reflected by the per curiam of the trial judge, his ruling was not based on that ground as contended by counsel, the pertinent part which reads as follows:

"This bill of exceptions, filed by the defendant, Donald Vale, is somewhat confusing inasmuch as a part of said bill of exceptions was reserved to the overruling of a Motion to Suppress and, secondly when certain evidence was introduced, an objection was made by the defense as to the introduction of this evidence which evidence was the result of search conducted by members of the New Orleans Police Department.

"The Motion to Suppress the evidence filed on behalf of this defendant reiterates all of the allegations made by the defendant, James P. Vale, and, in addition thereto, alleges that the defendant Donald Vale, did not live in the residence located at 1826 Arts Street.

"The Motion to Suppress on behalf of Donald Vale was filed the morning of the trial and was

heard outside the presence of the jury panel and between the attorneys and the Court it was determined that the Motion to Suppress filed on behalf of Donald Vale, contained all of the allegations that were alleged by the defendant, James P. Vale, in his Motion to Suppress the Evidence and, in addition thereto, Donald Vale's Motion to Suppress alleged that he was not a resident of 1826 Arts Street.

"In overruling the Motion to Suppress on behalf of Donald Vale, the Court was cognizant of all of the evidence pertaining to the search and seizure inasmuch as the evidence pertaining to search and seizure was the same evidence as had been presented and passed upon by this Court in trying the Motion to Suppress on behalf of James P. Vale.

"The only new proposition presented by this Motion to Suppress was the fact that the defendant, Donald Vale, did not reside at the address 1826 Arts Street, the place that was searched. * * *

"A recitation of the facts as disclosed on the trial of the Motion to Suppress on behalf of James P. Vale discloses without doubt that the police officers had probable cause to search the residence of 1826 Arts Street, having just seen Donald Vale come out of the residence, speak to someone in a car, go back into the residence and then come out again and again speak to the person in the automobile. * * *

"It would also be noted that Donald Vale was arrested immediately in front of the residence 1826 Arts Street after he was observed by the police officers coming from the residence 1826 Arts Street.

"Under these circumstances, the court overruled the Motion to Suppress on the ground that the search was a valid search and seizure. * * *

From the foregoing it is clear that counsel's argument lacks merit and that the trial judge properly overruled Donald Vale's motion to suppress the fruits of the search of 1826 Arts Street and his objection when they were offered into evidence.

The next bill of exception relied upon by James Vale was reserved to the overruling of his pre-trial motion

for severance wherein he alleged a joint trial would "(1) work a severe hardship * * * and cause him great prejudice and bias before a jury." "(2) the place where the narcotics were found, namely the coat, the ownership of the coat was claimed by the defendant Donald Vale therefore to force the defendant to trial with his brother would additionally work a prejudice to him," and "(3) that because of the facts, surrounding the arrest of both defendants in this case, the defense of the defendant, James P. Vale, would be antagonistic to that of the defendant, Donald Vale."

This bill of exception is without merit. The Code of Criminal Procedure specifically declares that "Jointly indicted defendants shall be tried jointly unless: (1) The State elects to try them separately; or (2) The court, on the motion of the defendant, and after contradictory hearing with the district attorney, is satisfied that justice requires a severance." Article 704.

As was very aptly observed by the trial judge (who first referred to the rule of law controlling in such cases) there was neither facts set out in the motion nor by argument of counsel to show any hardship to defendant or that could be considered as prejudicial to his cause, nor did he find any facts from which it could be concluded that the defense of James Vale would be antagonistic to Donald Vale's.

We fail to appreciate under what process of reasoning it can be deduced that the joint trial of James and Donald Vale would cause a hardship or be prejudicial to the defense of James Vale when he alleged in his motion that his co-defendant, Donald, had taken full blame for the narcotics and the paraphernalia concealed in the house where he resided. We believe, as observed by the trial judge, the statement alluded to his brother reached the jury through the testimony of the officers and such evidence, on the contrary, was to his benefit.

Although it was not pleaded in the motion for severance that James intended to call his brother, his counsel, nevertheless, both orally and in brief for the first time, argues that reversible error was committed inasmuch as the denial of his motion deprived him of the right to

call his brother to the stand for the purpose of eliciting testimony to hold him blameless. Counsel attempts to support his argument by ingenious process and reasoning that the comments to be found under Article 704 of the Code of Criminal Procedure show that "Louisiana had adopted the Federal rule as to the right to a severance," citing United States v. Echeles, 352 F.2d 892, in which that court referred to the case of DeLuna v. United States, 308 F.2d 140, on the subject. Counsel concedes that this plea was not made in the motion, but contends the court was bound to supply this question as a matter of law. He also argues James was hereby deprived of his mother's testimony.

There is no merit to counsel's contention. Counsel does not state any reason why James was deprived of his mother's testimony, and we can think of none. As to counsel's contention as to James' right to a severance under article 704 of the Code of Criminal Procedure because of certain comments to be found thereunder, and his appreciation of the intent of the legislature in adopting the article, it is untenable. As pointed out in State v. Pebworth, 251 La. 1063, 208 So. 2d 530, "Severance is not a matter of right, but rather one that rests in the sound discretion of the trial judge 'whose ruling will not be interfered with, unless manifestly erroneous and injurious to the accused.' State v. Cook, 215 La. 163, 39 So. 2d 898."

We think the observation of this court in the case of State v. LaRocca, 168 La. 204, 121 So. 744, speaks eloquently in support of why severance on joint trials is not a matter of right, to-wit:

"We know of no case in our jurisprudence in which it has been held advisedly * * * that codefendants on joint trial are entitled to a severance as a matter of right, merely because one codefendant may desire or be willing, to testify for the other codefendant. * * * Such a doctrine, without check of limitation, would be destructive to the efficient administration of public justice in all cases of major crimes committed in mass formation, such as the bank robberies of today, since the state would be

compelled to have a separate trial for each of the codefendants in every case, before a conviction or acquittal could be had. Such a condition in the courts of this state would lead, in many cases, not only to a travesty upon public justice, but also to protracted and unreasonable delays in the enforcement of the law, should conviction be finally secured."

The federal decisions on this subject are legion and to the same affect. See, Gorin v. United States, 313 F.2d 641, cert. denied, 374 U.S. 829, 83 S.Ct 1870, 10 L.Ed 2d 1052; United States v. Sopher, 362 F.2d 523, cert. denied, 385 U.S. 928, 87 S.Ct 286, 17 L.Ed 2d 210; United States v. Van Allen, 28 F.R.D. 329.

We find no difficulty in distinguishing the cases relied upon by defendant. In the Echeles case the court found that Echeles' cause was prejudiced in denying him a severance from his co-defendant, a former client, because of his inability to call him to testify to obtain evidence of prior statements holding Echeles blameless, whereas in the instant case, it cannot be said James was prejudiced, for his co-defendant's prior statements claiming full responsibility and ownership of the narcotics and paraphernalia forming the basis of the prosecution was introduced into evidence, reaching the jury through the testimony of the officers. The DeLuna case is likewise inapposite from a factual as well as a legal standpoint for therein the co-defendant not only took the stand placing the blame on the other, who did not take the stand, but his attorney commented on the failure of the co-accused to take the stand. This was held to have prejudiced the defendant who failed to take the stand.

The next error complained of by Donald Vale was to the overruling of his objection to the admission into evidence his oral confession or inculpatory statements as to the ownership of the narcotics found following his arrest and during the search. Donald Vale based his objection on the contention that he was not advised of his constitutional rights. However, his counsel now concedes the officer informed him of his rights, but claims "it is not sufficient that a defendant be merely apprised of his rights, it must also indicate that the defendant under-

stands what is being explained to him," and suggests "it is entirely doubtful" that he fully understood what was being explained to him.

Counsel for the accused in reserving a bill of exception to the judge's ruling made the entire note of evidence a part of the bill, a perusal of which will unmistakeably support the judge's ruling in that it discloses promptly after the defendant's arrest and after entering the house he was fully apprised of his constitutional rights in accordance with the guidelines set forth by the United States Supreme Court in *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct 1602; 16 L.Ed 2d 694. He unquestionably understood the import thereof and, nevertheless, without any coercion, threats or inducements volunteered the statements that the objects seized belonged to him.

The next two errors complained of by defendant, Donald Vale, also lack merit as reflected by the per curiam of the trial judge thereto:

"Bill of Exception No. 3 and Bill of Exception No. 4 will be treated together as one bill of exception, although reserved separately, and separate bills of exceptions having been filed, because State Exhibit S-2, a spoon, and State Exhibit S-3, a brown paper bag contained a hypodermic needle and an eye dropper, commonly referred to as 'an outfit', were found together in a plastic bag in the residence of 1826 Arts Street.

"These objects were the fruits of the search conducted by the members of the Narcotics Division of the New Orleans Police Department, and they were introduced by the State for the purpose of showing system and intent on the part of the defendant.

"As has been set forth in other per curiams to other bills of exceptions, the crime of possessing narcotics is a secretive proposition. It is a crime where intent is a necessary element and from the purpose of showing knowledge and intent, State Exhibit S-2 and State Exhibit S-3 were admitted into evidence."

Each defendant claims the trial judge erroneously overruled their motion for a new trial. Donald Vale's motion for a new trial is based solely on the trial judge's overruling his motion to suppress the evidence, contending "(1) *** that the motion to suppress evidence was overruled by the Court on the sole grounds that since defendant did not live or own the premises searched he did not have standing to object to a search and seizure," and "(2) *** the Court was in error in stating there was probable cause for an arrest and search incidental thereto, since no evidence was heard on Donald Vale's motion to suppress."

We are in full accord with the observation of the trial judge in his per curiam to this bill that the contention has already been considered and resolved in Donald Vale's Bill of Exception Number 1 and presents nothing new for our consideration.

The trial judge in his per curiam to the bill of exception reserved to the overruling of James Vale's motion for a new trial prepared by his counsel shows, in addition to reiterating the alleged error committed during the trial and which had already been disposed of, thus presenting nothing new for consideration, alleged that the "numerous adverse newspaper articles referring to mover's brother and co-defendant, Donald Vale, deprived mover of a fair and impartial trial when tried without a severance, and when tried with his brother and co-defendant, Donald Vale."

We think the trial judge properly overruled the motion. In disposing of the contention that the newspaper articles deprived him of a fair trial when tried without a severance he pointed out this was not mentioned in the motion for severance and, in any event, it is not a matter to be considered in a motion for a severance but one for a change of venue which was never filed.

The trial judge also calls our attention to the fact there was also a motion for a new trial subsequently filed by James Vale in proper person in which the bills of exception reserved during the trial are reurged, and in addition, he questions the sufficiency of the evidence and contends that the attorney appointed by the court to de-

fend him did not have time to properly prepare the case. By a supplemental motion for a new trial he urged that he was not competently defended by this attorney, and it was error for the court to appoint him because of certain unethical conduct by the attorney in another matter.

A review of the record will disclose defendant was represented by counsel of his own choice when arraigned on May 1, 1967, but on August 21, 1967 the attorney filed motion to withdraw as counsel which, following hearing on August 25, was granted. On September 6, eight days prior to trial, the court appointed counsel for James who represented him throughout the trial, no objection to this counsel being made at the time of the appointment or during the trial. Moreover, as pointed out by the trial judge, the alleged misconduct on the part of counsel had no connection with this case, and we think the court properly found the attorney not only did nothing unethical during the trial of this case, but his conduct of the case was above reproach, having defended the accused vigorously and ably and to the best of his ability.

Counsel now representing defendant⁸ apparently in evaluating his client's case obviously agreed with the trial judge and abandoned all contentions urged in the motion for a new trial, with the exception that he claims the court erred in denying the motion because of the insufficiency of the evidence urging his client was convicted on "rather weak 'constructive possession'." In other words, counsel does not claim there was no evidence to convict him of the crime charged, but states, in effect, it was merely circumstantial, hence, weak.

Although the appellate jurisdiction of this court is specifically limited by our constitution to questions of law alone,⁹ when it is asserted there is a total lack of evidence to support the conviction of the crime charged, or

⁸ Following sentence James Vale employed new counsel who represented him on appeal, his appointed counsel having withdrawn as counsel.

⁹ "The Supreme Court has control of and general supervisory jurisdiction over all inferior courts. * * * In criminal cases its appellate jurisdiction extends to questions of law only." Art VII, Sec. 10, La. Constitution.

any element thereof, this raises a question of law that is subject to our review. In other words, this court lacks jurisdiction to decide a question of fact or the sufficiency of the evidence relating to the guilt or innocence of a party accused in a criminal prosecution; but, where there is some evidence, whether it be direct or circumstantial, to sustain the conviction, the Supreme Court cannot pass upon the sufficiency thereof, as that comes within the exclusive province of the jury. *State v. Campbell*, 173 La. 831, 138 So. 853; *State v. Verret*, 174 La. 1059, 142 So. 688; *State v. Fountain*, 175 La. 221, 143 So. 55; *State v. Bonner*, 193 La. 387, 190 So. 621; *State v. Haddad*, 221 La. 337, 59 So. 2d 411; *State v. Champagne*, 251 La. 849, 206 So. 2d 518.

Following the overruling of the motions for new trial filed by each of the defendants, the State filed a double bill of information against Donald Vale and James Valé charging each as a second offender under R.S. 15:529.1¹⁰ to which each reserved a bill of exception to the overruling of their motion for a jury trial thereon.

In denying the defendant's motion for trial by jury the trial judge in his per curiam pointed out that R.S. 15:529.1 provides for increased punishment for second and subsequent offenders and prescribes the procedure to be followed, but does not require a trial by jury, citing *State v. Guidry*, 169 La. 215, 124 So. 832. We are in full accord with this conclusion for it is well established that this law does not make it a crime to be a multiple offender, but it merely prescribes an enhanced penalty for multiple offenders and the procedure to be followed by the trial judge. *State v. Hingle*, 242 La. 844, 139 So. 2d 205. It is, therefore, clear that *Duncan v. Louisiana*,

U.S. , S.Ct , 20 L.Ed 2d 491, relied upon by defendant is inapposite from a factual and legal standpoint, and, therefore, not controlling.

We find the trial judge properly overruled the motion to quash the bill of information filed under the multiple offender statute that was filed by Donald Vale, observing in his per curiam as follows:

¹⁰ See footnote 2.

"The Motion to Quash, in paragraph 1, sets forth that Louisiana Revised Statute 15:529.1, under which the defendant stands charged, is unconstitutional and is in violation of the Eighth Amendment of the Constitution of the United States in that for the defendant to be punished as a habitual offender would be to inflict cruel and unusual punishment on him.

"It has been repeatedly held in this State and a number of other states that to punish a person who is a habitual offender merely increases the penalty for the offense committed and that the punishment as a habitual offender is not cruel and unusual punishment.

"The second paragraph of the Motion to Quash states that the multiple offender statute seeks to punish a status rather than a crime. This contention is untenable in view of the decisions of the Louisiana Supreme Court, which decisions have been cited in another per curiam to another bill of exception, as it has been held that the multiple offender's act does not punish a status, but, rather, increases the punishment for a double or multiple offender.

"Paragraph 3 of the Motion of Quash filed on behalf of this defendant sets forth that although Louisiana Revised Statute 15: 529.1 may be constitutional,¹¹ that said statute is applied by the authorities in an unconstitutional manner."

The trial judge points out in his per curiam that the latter point was made by this defendant's co-defendant, James Vale, in his motion to quash and disposed of under a per curiam to his Bill of Exception No. 8.

¹¹ Counsel evidently recognized, as he should have if he read State v. Johnson, 250 La. 473, 196 So. 2d 797, the statute has been held constitutional. In that case this court in holding the statute constitutional quoted with approval a recently handed down opinion of the United States Supreme Court in the consolidated cases of Spencer v. State of Texas, Bell v. State of Texas, and Reed v. Beto, 385 U.S. 554, 87 S.Ct 648, 17 L.Ed 2d 606, wherein the court reasoned, "Such statutes and other enhanced sentence laws, and procedures designed to implement their underlying policies, have been enacted in all the States, and by the Federal Government as well."

We find the record reveals a hearing was held on that motion as applied to both defendants, and at this hearing it was conceded by defense counsel that the statute is constitutional, but it was contended there is discrimination in its application. However, the only evidence offered was the testimony of an assistant district attorney for the parish who testified it was the policy of the district attorney's office to prosecute as multiple offenders all who were tried and convicted of a second or subsequent felony, and under the broad power and discretion vested in the district attorney, that generally it was the procedure to grant immunity from prosecution as multiple offender to those entering a plea of guilty to a felony charge if they had a previous conviction for a felony. We, therefore, agree with the trial judge in his conclusion that it was not shown that there was any discrimination in the application of the statute involved.

The trial judge also held a hearing on that portion of James Vale's motion to quash with respect to his allegation that the judge could not consider his Alabama conviction in determining his guilt as a multiple offender; and, we think he properly disposed of the same.

A study of the record discloses that at the time of the hearing James Vale stipulated he was the one convicted in Alabama, but he did not stipulate the documents offered by the State in regard to the Alabama proceedings prove what the offense in Alabama was, nor that it was a felony in Louisiana. The case was submitted on the documents produced from Alabama.

We find the record shows that James Vale was convicted in Alabama of second degree burglary¹² and the trial

¹² Code of Alabama, Title 14, Section 86—"Any person who in the daytime, with intent to steal or to commit a felony breaks into and enters any inhabited dwelling house or any other house or building which is occupied by any person lodged therein, or any person who either in the nighttime or daytime, with intent to steal or to commit a felony, breaks into and enters any inhabited dwelling house * * * or into any shop * * * in which any goods, * * * or other valuable thing is kept for use, sale or deposit, provided such structure * * * is specifically constructed or made to keep such goods, * * * is guilty of burglary in the second degree and shall on conviction be imprisoned in the penitentiary for not less than one year, nor more than ten years."

judge concluded, and we think correctly, that this offense was equivalent to the offense in this state of simple burglary.¹³ While we do not have a statute labeled "second degree burglary", the nature of the offense of which the defendant was convicted in Alabama, if committed in this state would be a felony as covered by our statute labeled "simple burglary."

Although the defendant raised the issue that he was not represented by counsel at the time of the Alabama conviction, it has not been argued here. However, the trial judge points out the motion merely states he was not represented and he failed to introduce any evidence to support the allegation. Moreover, we have examined the record from Alabama and find it reflects clearly that James Vale was not indigent at the time of the Alabama conviction since he had at the time secured a professional bondsman for his \$5,000 bail bond and he had requested the Alabama judge grant him time to employ counsel to represent him, which was granted. It was upon his failure to return to court at the specified time with counsel that a writ for his arrest issued. Thereafter he withdrew his plea of not guilty and entered a plea of guilty, thus, clearly indicating he was fully cognizant of his right to an attorney and validly waived his right.

¹³ R.S. 14:62—"Simple burglary is the unauthorized entering of any vehicle, water craft, dwelling or other structure, movable or immovable, with the intent to commit any forcible felony or any theft therein, other than as set forth in article 60. Whoever commits the crime of simply burglary shall be imprisoned at hard labor for not more than nine years." The reporter's comment headed "Scope" points out, "This section is intended to include all types of entering not classified as aggravated burglary. If any of the essentials of aggravated burglary is lacking, the offender then commits the crime of simple burglary with a lesser maximum penalty provided."

R.S. 14:60 provides, "Aggravated burglary is the unauthorized entering of any inhabited dwelling, or any structure * * * where a person is present, with the intent to commit a felony or any theft therein, if the offender, (1) Is armed with a dangerous weapon; or (2) After entering arms himself with a dangerous weapon; or (3) Commits a battery upon any person while in such place, or in entering or leaving such place. Whoever commits the crime of aggravated burglary shall be imprisoned at hard labor for not less than one nor more than thirty years."

Finally, in addition to the alleged errors hereinabove considered, we note in the appendix to the brief of James Vale counsel has reserved, but neither briefed nor argued Bills of Exception No. 4 and 5, simply stating, "That the Court erred in admitting evidence of 'track marks' to show possession," and "That the Court erred in admitting the purported expert testimony of Officer Soule as to 'track marks'."

We find no merit to these bills. In fact, we find, "It is conceded that this Court has held 'track marks' are admissible to show guilty knowledge in a possession case." See, State v. Johnson, 228 La. 318, 82 So. 2d 317; State v. Harris, 232 La. 911, 95 So. 2d 496; State v. Maney, 242 La. 223, 135 So. 2d 473. The ruling in respect to admitting the testimony of Officer Soule as an expert is fully supported by the record.

For the reasons assigned the conviction and sentences of the defendants are affirmed.

IN THE SUPREME COURT OF THE STATE
OF LOUISIANA

New Orleans, 70112

Court was duly opened, pursuant to adjournment. Present Their Honors: John B. Fournet, Chief Justice, Joe B. Hamiter, E. Howard McCaleb, Walter B. Hamlin, Joe W. Sanders, Frank W. Summers and Mack E. Barham, Associate Justices.

MINUTE ENTRY—ORDER DENYING REHEARING
—December 1968

Rehearings were refused in the following cases:

49,066 STATE v. VALE et al

* * * *

IN THE SUPREME COURT OF LOUISIANA

No. 49,066

DONALD J. VALE, APPELLANT

-v-

STATE OF LOUISIANA, APPELLEE

[File endorsement (omitted in printing)]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE
UNITED STATES.—filed January 28, 1969

I. Notice is hereby given that Donald J. Vale, the appellant above named, hereby appeals to the Supreme Court of the United States from the final order denying his application for rehearing on the judgment affirming his conviction entered herein on December 16, 1968.

This appeal is taken pursuant to 28 U.S.C.A. sec. 1257 (2); alternatively, application for a writ of certiorari is taken pursuant to 28 U.S.C.A. sec. 1257(3).

Appellant was convicted of the crime of possession of narcotics, in violation of LSA-R.S. 40:962; following conviction thereof, an habitual offender information was brought; he was sentenced to fifteen (15) years confinement at hard labor; and is presently confined at the Louisiana State Penitentiary at Angola, Parish of West Feliciana, State of Louisiana.

II. The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the full record of all proceedings before this Honorable Court and the District Court below.

III. The following questions are presented by this appeal:

1. May the punishment prescribed by LSA-R.S. 40:962 constitutionally be enhanced under LSA-R.S. 15:529.1, when: (1) LSA-R.S. 40:962 contains an inherent enhanced punishment for the multiple offender? and

(2) LSA-R.S. 15:529.1, is admittedly, discriminatorily administered, intentionally, purposefully and systematically, only against those defendants who seek a trial by jury?

2. May a State statute, Art. 225, La.C.Cr.P., which commands that "a peace officer making an arrest shall take from the person arrested all weapons and incriminating articles which he may have about his person. * * *," be extended to allow a person so arrested to be taken into a private home he was seen to leave, and to which he was attempting to return upon his arrest, and there a general search be conducted for evidence presumed by the arresting officers to be present, without contravening an accused's rights under U.S.C.A. Const. Amend. 14, § 1?

3. May the evidence so seized, or the fruits thereof, be used against a defendant claiming his constitutional immunity, without contravening the first section of the Fourteenth Amendment to the United States Constitution?

/s/ Donald J. Vale

DONALD J. VALE, Appellant pro se

Address: P.M.B. No. 66816—C.B.C.

Angola, Louisiana 70712

[PROOF OF SERVICE (omitted in printing)]

SUPREME COURT OF THE UNITED STATES

No. 43 Misc., October Term, 1969

DONALD J. VALE, APPELLANT

v.

LOUISIANA

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN
FORMA PAUPERIS—October 13, 1969

ON CONSIDERATION of the motion for leave to proceed herein in forma pauperis,

IT IS ORDERED by this Court that the said motion be, and the same is hereby, granted.

SUPREME COURT OF THE UNITED STATES

No. 43 Misc., October Term, 1969

DONALD J. VALE, APPELLANT

v.

LOUISIANA

APPEAL from the Supreme Court of the State of Louisiana.

ORDER POSTPONING JURISDICTION—October 13, 1969

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of jurisdiction is postponed to the hearing of the case on the merits and review is limited to the search and seizure question. This case is transferred to the appellate docket as No. 727 and placed on the summary calendar.